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# U.S. Tax Guide for Aliens

For use in preparing  
**1995** Returns



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## Important Changes

**Taxation of U.S. social security benefits received by nonresident aliens.** Beginning in 1995, 85% of any U.S. social security benefit received by a nonresident alien is subject to tax at a rate of 30%, unless exempt by treaty.

**Earned income credit for nonresident aliens.** Beginning in 1995, if you are a nonresident alien for any part of the year, you cannot claim an earned income credit unless you elect to be treated as a resident alien for tax purposes.

**New Form 1040NR-EZ.** You may be able to use new Form 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*. This form is shorter and easier to prepare than Form 1040NR. To see if you meet the conditions for filing this form, see *Form 1040NR-EZ* in Chapter 7.

## Important Reminders

**Aliens in United States on "Q" visas.** New rules apply to aliens who enter the United States on "Q" visas. The rules were effective October 1, 1994, and consist of the following:

- "Q" visa holders do not count the number of days they are in the United States in determining whether they are resident aliens under the substantial presence test. (See *Exempt individual under Substantial Presence Test* in Chapter 1.)
- "Q" visa holders may be able to exclude from U.S. gross income pay received from a foreign employer. (See *Nonresident Aliens* in Chapter 3.)
- "Q" visa holders are treated as engaged in a trade or business in the United States. (See *Other Trade or Business Activities* in Chapter 4.)
- "Q" visa holders are exempt from social security and Medicare taxes on wages if the services are performed to carry out the purpose for which they were admitted to the United States. (See *Social Security and Medicare Taxes* in Chapter 8.)
- Certain scholarships and fellowships "Q" visa holders receive are afforded a lower rate of withholding. (See *Reduced Withholding on Scholarships and Fellowship Grants* in Chapter 8.)

**Change of address.** If you change your mailing address, be sure to notify the Internal Revenue Service using Form 8822, *Change of Address*.

Nonresident aliens who filed Form 1040NR with the Internal Revenue Service Center, Philadelphia, PA 19255, should send the form there. Resident aliens should send the form to the Internal Revenue Service Center for their old address (addresses for the Service Centers are on the back of the form).

## Introduction

For tax purposes, an alien is an individual who is not a U.S. citizen. Aliens are classified as **nonresident** aliens and **resident** aliens. This publication will help you determine your status and gives information you will need to file your U.S. tax return.

Resident aliens generally are taxed on their worldwide income, the same as U.S. citizens. Nonresident aliens generally are taxed only on their income from sources within the United States. It is important, therefore, to first determine whether you are a resident alien or a nonresident alien. Chapter 1 explains the rules to determine your status.

Nonresident aliens are taxed on their U.S. source income (and on certain foreign source income that is effectively connected with a trade or business in the United States). However, special rules apply to taxing their income. Investment income is taxed at a flat rate of 30% of gross income, unless an income tax

treaty provides for a lower rate. Business income is taxed on a net basis (income minus any allowable deductions) at the graduated rates that apply to U.S. citizens or residents. Chapters 2 and 4 cover these special rules.

**Students, teachers, and trainees.** If you are a foreign student, trainee, teacher, or participant in the Cultural and Educational Exchange Program, there are special provisions of the law that may apply to you. See Chapter 3. Also see *Income Entitled to Tax Treaty Benefits* in Chapter 8 for procedures for claiming exemption under tax treaties from withholding of tax on compensation.

**Forms to file.** If you are a nonresident alien who must file a U.S. income tax return, use either Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, or Form 1040NR-EZ, *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*. See Chapter 7.

**Dual status.** An alien whose status changes during the tax year from nonresident alien to resident alien, or vice versa, has a dual status for that year. A dual-status alien is taxed on the income for the two periods under the provisions of law that apply to each period. If your alien status changed during the year, see Chapter 6 for instructions on how to figure your tax.

**Other topics** covered in this publication include the withholding of U.S. income tax and social security tax from amounts paid to nonresident aliens (Chapter 8) and the special provisions for employees of foreign governments and international organizations (Chapter 10).

Many nonresident aliens are eligible for the benefits provided by income tax treaties between the United States and their country of residence. Chapter 9 summarizes these benefits. For more detailed information, see Publication 901, *U.S. Tax Treaties*.

If you are an alien, you may have to get a sailing or departure permit before leaving the United States. See Chapter 11.

**Further information.** If you need information on a subject not covered in this publication, you may check our other free publications. To order publications and forms in the United States, call 1-800-TAX-FORM (1-800-829-3676). If you have a foreign address, use the order blank on the back cover of this publication.

**Telephone help.** If you are in the United States, you can call the IRS with your tax question Monday through Friday during regular business hours. Check your telephone book for the local number, or you can call 1-800-829-1040. If you are outside the United States, write to the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, USA.

**Telephone help for hearing-impaired persons.** If you are in the United States and

have access to TDD equipment, you can call 1-800-829-4059 with your tax question or to order forms and publications. See your tax package for the hours of operation.

## 1.

# Nonresident Alien or Resident Alien?

## Topics

This chapter discusses:

- How to determine if you are a nonresident, resident, or dual-status alien
- How to treat a nonresident spouse as a resident alien

## Useful Items

You may want to see:

### Form (and Instructions)

- ☐ **1040** U.S. Individual Income Tax Return
- ☐ **1040A** U.S. Individual Income Tax Return
- ☐ **1040NR** U.S. Nonresident Alien Income Tax Return
- ☐ **8833** Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)
- ☐ **8840** Closer Connection Exception Statement for Aliens
- ☐ **8843** Statement for Exempt Individuals and Individuals With a Medical Condition

You should first determine whether, for income tax purposes, you are a resident alien or a nonresident alien. Explanations of both categories follow. Also, Figure A will help you find whether you are a resident or nonresident alien.

If you find that you are both a nonresident and resident in the same year, you have a dual status. Dual status is explained later. Also explained later is a choice to treat your nonresident spouse as a resident and some special situations for aliens from American Samoa and Puerto Rico and aliens employed by the U.S. Navy in Cuba.

## Nonresident Aliens

If you are an alien (not a U.S. citizen), you are considered a nonresident alien unless you meet one of the two tests described next under *Resident Aliens*.

## Resident Aliens

This section describes the two tests you must use to determine if you are a resident alien of the United States. It also discusses a special rule for aliens who interrupt their U.S. residency and explains how tax treaties affect the two tests.

You are a resident alien of the United States for tax purposes if you meet either the **green card test** or the **substantial presence test** for the calendar year (January 1–December 31). Even if you do not meet either of these tests, you may be able to choose to be treated as a U.S. resident for part of the year. See *First-Year Choice* under *Dual Status Aliens*, later. Special rules apply for the first and last years of residency (the dual-status tax years). See Chapter 6.

### Green Card Test

You are a resident for tax purposes if you are a lawful permanent resident of the United States **at any time** during the calendar year. (However, see *Dual Status Aliens*, later.) This is known as the “green card” test. You are a lawful permanent resident of the United States at any time if you have been given the privilege, according to the immigration laws, of residing permanently in the United States as an immigrant. You generally have this status if the Immigration and Naturalization Service (INS) has issued you an alien registration card, also known as a “green card.” You continue to have resident status under this test unless it is taken away from you or is administratively or judicially determined to have been abandoned.

Resident status is considered to have been taken away from you if the U.S. government issues you a final administrative or judicial order of exclusion or deportation. A **final judicial order** is an order that you may no longer appeal to a higher court of competent jurisdiction.

An administrative or judicial determination of abandonment of resident status may be initiated by you, the INS, or a U.S. consular officer. If you initiate the determination, your resident status is considered to be abandoned when you file either of the following with the INS or U.S. consular officer:

- 1) Your application for abandonment, or
- 2) Your Alien Registration Receipt Card attached to a letter stating your intent to abandon your resident status.

You must file the letter by certified mail, return receipt requested. You must keep a copy of the letter and proof that it was mailed and received.

If the INS or U.S. consular officer initiates this determination, your resident status will be considered to be abandoned when the final administrative order of abandonment is issued. If you are granted an appeal to a federal court of competent jurisdiction, a final judicial order is required.

## Substantial Presence Test

You will be considered a U.S. resident for tax purposes if you meet the substantial presence test for the calendar year. To meet this test, you must be physically present in the United States on at least:

- 1) 31 days during the current year, **and**
- 2) 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
  - a) All the days you were present in the current year (1995), and
  - b)  $\frac{1}{3}$  of the days you were present in the first year before the current year (1994), and
  - c)  $\frac{1}{6}$  of the days you were present in the second year before the current year (1993).

**Example.** You were physically present in the United States on 120 days in each of the years 1993, 1994, and 1995. To determine if you meet the substantial presence test for 1995, count the full 120 days of presence in 1995, 40 days in 1994 ( $\frac{1}{3}$  of 120), and 20 days in 1993 ( $\frac{1}{6}$  of 120). Since the total for the 3-year period is 180 days, you are not considered a resident under the substantial presence test for 1995.

**The term United States** includes the following:

- 1) All 50 states and the District of Columbia,
- 2) The territorial waters of the United States, and
- 3) The seabed and subsoil of those submarine areas that are adjacent to U.S. territorial waters and over which the United States has exclusive rights under international law to explore and exploit natural resources.

The term does not include U.S. possessions and territories or U.S. air space.

### Days of Presence in the United States

You are treated as present in the United States on any day if you are physically present in the country at any time during the day. However, there are exceptions to this rule. Do not count the following as days of presence in the United States for the substantial presence test:

- 1) Days you commute to work in the United States from a residence in Canada or Mexico if you regularly commute from Canada or Mexico.
- 2) Days you are in the United States for less than 24 hours when you are in transit between two places outside the United States.
- 3) Days you were unable to leave the United States because of a medical condition that developed while you were in the United States.
- 4) Days you were an exempt individual.

The specific rules that apply to each of these four categories are discussed next.

**Regular commuters from Canada or Mexico.** Do not count the days on which you commute to work in the United States from your residence in Canada or Mexico if you regularly commute from Canada or Mexico. You are considered to commute regularly if you commute to work in the United States on **more than 75%** of the workdays during your working period.

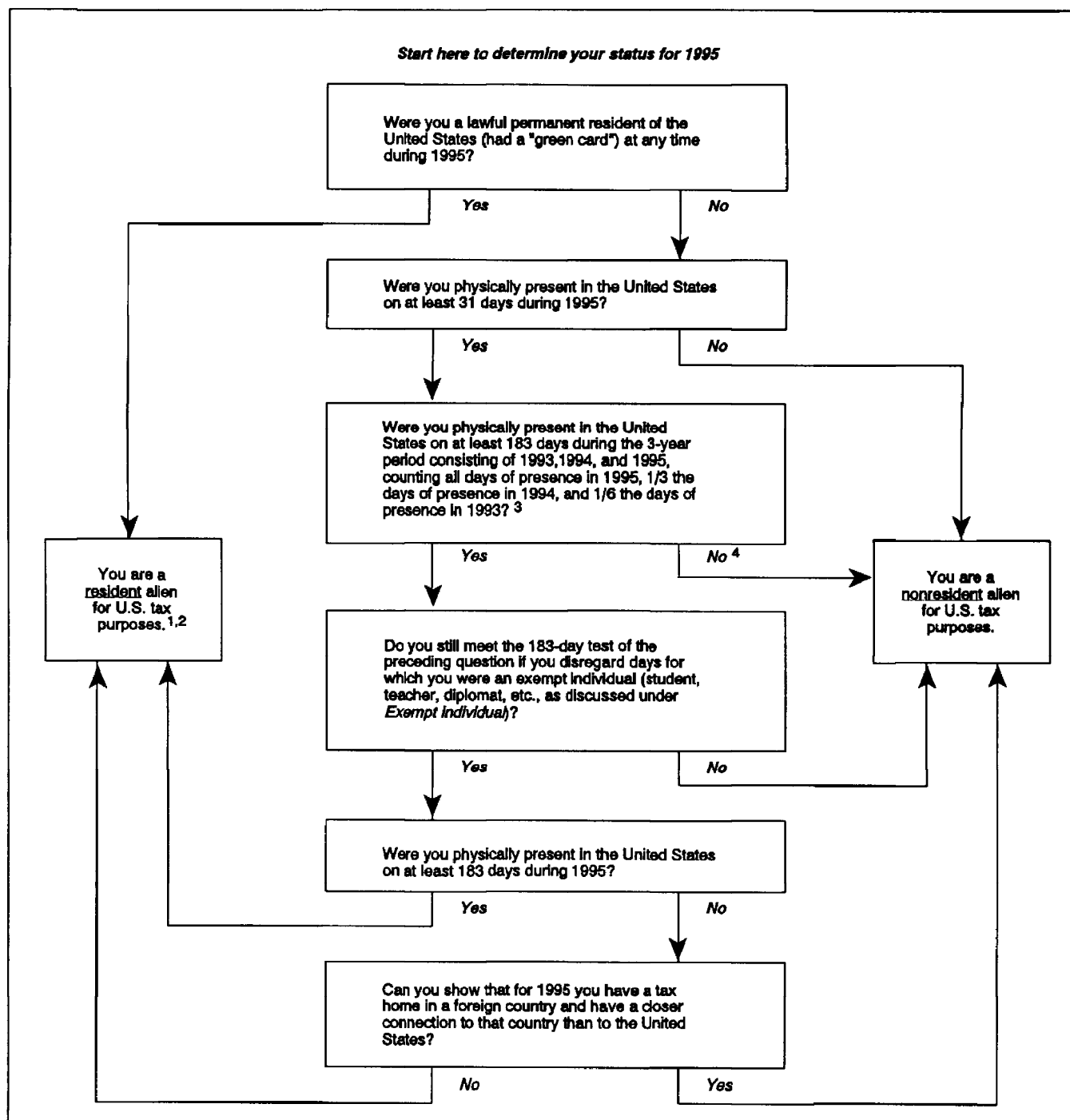
For this purpose, **commute** means to travel to work and return to your residence within a 24-hour period. **Workdays** are the days on which you work in the United States or Canada or Mexico. **Working period** means the period beginning with the first day in 1995 on which you are physically present in the United States to work and ending on the last day in 1995 on which you are physically present in the United States to work. If your work requires you to be present in the United States only on a seasonal or cyclical basis, your working period begins on the first day of the season or cycle on which you are present in the United States to work and ends on the last day of the season or cycle on which you are present in the United States to work. You can have more than one working period in 1995, and your working period can begin in one calendar year and end in the following calendar year.

**Example.** Maria Perez lives in Mexico and works for Compa'nia ABC in its office in Mexico. She was assigned to her firm's office in the United States from February 3, 1995, through June 1, 1995. On June 2, she resumed her employment in Mexico. There were 76 workdays in the working period beginning on February 3, 1995, and ending on June 1, 1995. On 69 days, Maria commuted each morning from her home in Mexico to work in Compa'nia ABC's U.S. office. She returned to her home in Mexico on each of those evenings. On 7 days, she worked in her firm's Mexico office. For purposes of the substantial presence test, Maria does not count the days she commuted to work in the United States because those days equal more than 75% of the workdays during the working period (69 workdays in the United States divided by 76 workdays in the working period equals 90.8%).

**Days in transit.** For the substantial presence test, do not count the days you are in the United States for less than 24 hours and you are in transit between two places outside the United States. You are considered to be in transit if you engage in activities that are substantially related to completing travel to your foreign destination. For example, if you travel between airports in the United States to change planes en route to your foreign destination, you are considered to be in transit. However, you are **not** considered to be in transit if you attend a business meeting while in the United States. This is true even if the meeting is held at the airport.

**Medical condition.** For the substantial presence test, do not count the days you intended

**Figure A. Nonresident Alien or Resident Alien?**



- 1 If this is your first or last year of residency, you may have a dual status for the year. See the discussion of *Dual Status*, in Chapter 1.
- 2 In some circumstances you may still be considered a nonresident alien under an income tax treaty between the U.S. and your country. Check the provisions of the treaty carefully.
- 3 Do not count the days you were unable to leave the United States because of a medical condition that arose while you were in the United States.
- 4 If you meet the substantial presence test for 1996, you may be able to choose treatment as a U.S. resident alien for part of 1995. For details see *Substantial Presence Test* under *Resident Aliens*, and *First-year choice* under *Dual Status*, in Chapter 1.

to leave, but could not leave the United States because of a medical condition or problem that developed while you were in the United States. Whether you intended to leave the United States on a particular day is determined based on all the facts and circumstances. For example, you may be able to establish that you intended to leave if your purpose for visiting the United States could be accomplished during a period that is not long enough to qualify you for the substantial presence test. However, if you need an extended period of time to accomplish the purpose of your visit and that period would qualify you for the substantial presence test, you would not be able to establish an intent to leave the United States before the end of that extended period.

In the case of an individual who is judged mentally incompetent, proof of intent to leave the United States can be determined by analyzing the individual's pattern of behavior before he or she was judged mentally incompetent.

If you qualify to exclude days of presence because of a medical condition, you must file Form 8843 (or a similar statement to explain your claim) with the IRS. See *Form 8843*, later.

You cannot exclude any days of presence in the United States under the following circumstances:

- 1) You were initially prevented from leaving, were then able to leave, but remained in the United States beyond a reasonable period for making arrangements to leave.
- 2) You returned to the United States for treatment of a medical condition that developed during a prior stay.
- 3) The condition existed before your arrival in the United States and you were aware of the condition. It does not matter whether you needed treatment for the condition when you entered the United States.

**Exempt individual.** For the substantial presence test, do not count days for which you are an exempt individual. The term "exempt individual" does not refer to someone exempt from U.S. tax, but to anyone in the following categories.

- 1) An individual temporarily present in the United States as a foreign government-related individual.
- 2) A teacher or trainee temporarily present in the United States under a "J" or "Q" visa, who substantially complies with the requirements of the visa.
- 3) A student temporarily present in the United States under an "F," "J," "M," or "Q" visa, who substantially complies with the requirements of the visa.
- 4) A professional athlete temporarily in the United States to compete in a charitable sports event.

The specific rules for each of these four categories are discussed next.

**1) Foreign government-related individuals.** A foreign government-related individual is an individual (or a member of the individual's immediate family) who is temporarily present in the United States—

- 1) As a full-time employee of an international organization,
- 2) By reason of diplomatic status, or
- 3) By reason of a visa (other than a visa that grants lawful permanent residence) that the Secretary of the Treasury determines represents full-time diplomatic or consular status.

An **international organization** is any public international organization that the President of the United States has designated by Executive Order as being entitled to the privileges, exemptions, and immunities provided for in the International Organizations Act. An individual is a full-time employee if his or her work schedule meets the organization's standard full-time work schedule.

An individual is considered to have **full-time diplomatic or consular status** if he or she:

- 1) Has been accredited by a foreign government that is recognized by the United States,
- 2) Intends to engage primarily in official activities for that foreign government while in the United States, and
- 3) Has been recognized by the President, Secretary of State, or a consular officer as being entitled to that status.

Members of the **immediate family** include the individual's spouse and unmarried children (whether by blood or adoption) but only if the spouse's or unmarried children's visa statuses are derived from and dependent on the exempt individual's visa classification. Unmarried children are included only if they:

- 1) Are under 21 years of age,
- 2) Reside regularly in the exempt individual's household, and
- 3) Are not members of another household.

The immediate family of an exempt individual does **not** include attendants, servants, or personal employees.

**2) Teachers and trainees.** A teacher or trainee is an individual, other than a student, who is temporarily in the United States under a "J" or "Q" visa and substantially complies with the requirements of that visa. You are considered to have substantially complied with the visa requirements if you have not engaged in activities that are prohibited by U.S. immigration laws and could result in the loss of your visa status.

Also included are immediate family members of exempt teachers and trainees. See the definition of immediate family earlier, under *Foreign government-related individuals*.

Even if you meet the requirements discussed above, you will **not** be an exempt individual if you were exempt as a teacher, trainee, or student for any part of 2 of the 6

preceding calendar years. However, you **will be** exempt if you were exempt as a teacher, trainee, or student for any part of 3 (or fewer) of the 6 preceding calendar years and—

- 1) A foreign employer paid all your compensation during 1995,
- 2) You were present in the United States as a teacher or trainee in any of the preceding 6 years, and
- 3) A foreign employer paid all of your compensation during each of those preceding 6 years you were present in the United States as a teacher or trainee.

A foreign employer includes an office or place of business of an American entity in a foreign country or a U.S. possession.

If you qualify to exclude days of presence as a teacher or trainee, you must file Form 8843 (or a similar statement to explain your claim) with the IRS. See *Form 8843*, later.

**Example 1.** Carla was temporarily in the United States during 1995 as a teacher on a "J" visa. Her compensation for the year was paid by a foreign employer. Carla was treated as an exempt teacher for the past 2 years but her compensation was not paid by a foreign employer. She will not be considered an exempt individual for 1995 because she was exempt as a teacher for at least 2 of the past 6 years.

**Example 2.** The facts are the same as in Example 1 except that all of Carla's compensation for the 2 preceding years was paid by a foreign employer. She will be an exempt individual for 1995 because she was exempt as a student, teacher, or trainee for only 2 of the preceding 6 calendar years.

**3) Students.** A student is any individual who is temporarily in the United States on an "F," "J," "M," or "Q" visa and who substantially complies with the requirements of that visa. You are considered to have substantially complied with the visa requirements if you have not engaged in activities that are prohibited by U.S. immigration laws and could result in the loss of your visa status.

Also included are immediate family members of exempt students. See the definition of immediate family earlier, under *Foreign government-related individuals*.

You will not be an exempt individual if you have been exempt as a teacher, trainee, or student for any part of more than 5 calendar years unless you establish to the satisfaction of the IRS district director that you do not intend to reside permanently in the United States and you have substantially complied with the requirements of your visa. The facts and circumstances to be considered in determining if you have demonstrated an intent to reside permanently in the United States include, but are not limited to:

- 1) Whether you have maintained a closer connection to a foreign country (discussed later), and
- 2) Whether you have taken affirmative steps to change your status from nonimmigrant

to lawful permanent resident as discussed later under *Closer Connection to a Foreign Country*.

If you qualify to exclude days of presence as a student, you must file Form 8843 (or a similar statement to explain your claim) with the IRS. See the discussion *Form 8843*, later.

**4) Professional athletes.** A professional athlete who is temporarily in the United States to compete in a charitable sports event is an exempt individual. A **charitable sports event** is one that meets the following conditions:

- 1) The main purpose is to benefit a qualified charitable organization,
- 2) The entire net proceeds go to charity, and
- 3) Volunteers perform substantially all the work.

In figuring the days of presence in the United States, you can exclude only the days on which you actually competed in a sports event. You cannot exclude the days on which you were in the United States to practice for the event, to perform promotional or other activities related to the event, or to travel between events.

If you qualify to exclude days of presence as a professional athlete, you must file Form 8843 (or a similar statement to explain your claim) with the IRS. See the discussion *Form 8843*, next.

**Form 8843.** If you exclude days of presence in the United States because you fall into any of the following categories, you must file Form 8843, *Statement for Exempt Individuals and Individuals With a Medical Condition*, or a similar statement.

- 1) You were unable to leave the United States as planned because of a medical condition,
- 2) You were temporarily in the United States as a teacher or trainee on a "J" or "Q" visa,
- 3) You were temporarily in the United States as a student on an "F," "J," "M," or "Q" visa, or
- 4) You were a professional athlete competing in a charitable sports event.

**How to file.** Attach Form 8843 (or your statement) to your 1995 income tax return. If you do not have to file a return, send the form or statement to the Internal Revenue Service Center, Philadelphia, PA 19255 by the due date for filing your income tax return. The due date for filing is discussed later in Chapter 7.

**Penalty for not filing.** If you do not timely file Form 8843 or a statement, you cannot exclude the days you were present in the United States as a professional athlete or because of a medical condition that arose while you were in the United States. You will not be able to claim these benefits in figuring the substantial presence test or in determining your first and last days of residency in the United States.

You will not be penalized if you can show by clear and convincing evidence that you took reasonable actions to become aware of

the filing requirements and significant steps to comply with those requirements.

## Closer Connection to a Foreign Country

Even if you meet the substantial presence test, you can be treated as a nonresident alien for 1995 if you:

- 1) Are present in the United States for less than 183 days in 1995,
- 2) Maintain a tax home in a foreign country during 1995, and
- 3) Have a closer connection during 1995 to one foreign country in which you have a tax home than to the United States (unless you have a closer connection to **two** foreign countries, discussed next).

**Closer connection to two foreign countries.** You can demonstrate that you have a closer connection to **two** foreign countries (but not more than two) if you meet all of the following conditions:

- 1) You maintained a tax home as of January 1, 1995, in one foreign country,
- 2) You changed your tax home during 1995 to a second foreign country,
- 3) You continued to maintain your tax home in the second foreign country for the rest of 1995,
- 4) You had a closer connection to each foreign country than to the United States for the period during which you maintained a tax home in that foreign country, and
- 5) You are subject to tax as a resident under the tax laws of either foreign country for all of 1995 or subject to tax as a resident in both foreign countries for the period during which you maintained a tax home in each foreign country.

**Tax home** has the same meaning as the one given in Chapter 2 under *Personal Property*. But there are two additional requirements you must meet. First, your tax home must be in existence for the **entire** current year. Second, your tax home must be located in the same foreign country for which you are claiming to have a closer connection.

**Foreign country.** In determining whether you have a closer connection to a foreign country, the term "foreign country" means:

- 1) Any territory under the sovereignty of the United Nations or a government other than that of the United States,
- 2) The territorial waters of the foreign country (determined under U.S. law),
- 3) The seabed and subsoil of those submarine areas which are adjacent to the territorial waters of the foreign country and over which the foreign country has exclusive rights under international law to explore and exploit natural resources, and
- 4) Possessions and territories of the United States.

**Establishing a closer connection.** You will be considered to have a closer connection to a foreign country than the United States if you or the IRS establishes that you have maintained more significant contacts with the foreign country than with the United States. In determining whether you have maintained more significant contacts with the foreign country than with the United States, the facts and circumstances to be considered include, but are not limited to, the following:

- 1) The country of residence you designate on forms and documents.
- 2) The types of official forms and documents you file, such as Form 1078, *Certificate of Alien Claiming Residence in the United States*, or Form W-8, *Certificate of Foreign Status*.
- 3) The location of the following—
  - a) Your permanent home,
  - b) Your family,
  - c) Personal belongings, such as cars, furniture, clothing, and jewelry owned by you or your family,
  - d) Social, political, cultural, or religious organizations with which you have a current relationship,
  - e) Your business activities (other than those that constitute your tax home),
  - f) The jurisdiction in which you hold a driver's license, and
  - g) The jurisdiction in which you vote.

It does not matter whether your permanent home is a house, an apartment, or a furnished room. It also does not matter whether you rent or own it. It is important, however, that your home be available at all times, continuously, and not solely for short stays.

You cannot claim you have a closer connection to a foreign country for 1995 if either of the following applies:

- 1) You personally applied, or took other steps during 1995, to change your status to that of a permanent resident, or
- 2) You had an application pending for adjustment of status during 1995.

Steps to change your status to that of a permanent resident include, but are not limited to, the filing of the following forms:

Form I-508, *Waiver of Immunities*

Form I-485, *Application for Status as Permanent Resident*

Form I-130, *Petition for Alien Relative*, on your behalf

Form I-140, *Petition for Prospective Immigrant Employee*, on your behalf

Form ETA-750, *Application for Alien Employment Certification*, on your behalf

Form OF-230, *Application for Immigrant Visa and Alien Registration*

**Form 8840.** You must file Form 8840, *Closer Connection Exception Statement for Aliens* (or

a similar statement) if you meet the exception to the substantial presence test because you have a closer connection to a foreign country or countries in 1995.

**How to file.** Attach Form 8840 or a similar statement to your 1995 income tax return. If you do not have to file a return, send the form or statement to the Internal Revenue Service Center, Philadelphia, PA 19255 by the due date for filing your income tax return. The due date for filing is discussed later in Chapter 7.

**Penalty for not filing.** If you do not timely file Form 8840 or a similar statement, you cannot claim a closer connection to a foreign country or countries. You will have to include all days of presence for purposes of the substantial presence test and for determining your first and last days of residency in the United States.

You will not be penalized if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

## Interrupted Period of Residence

You are subject to tax under a special rule if you interrupt your period of U.S. residence with a period of nonresidence. This applies if:

- 1) You were a U.S. resident for at least 3 consecutive calendar years,
- 2) You were a resident for at least 183 days in each of those years,
- 3) You were then taxed by the United States as a nonresident, and
- 4) You then again became a U.S. resident before the end of the third calendar year after the period in (1) above.

You are subject to the tax under this special rule for the period you were a nonresident alien and only if it is more than the tax that would normally apply to you as a nonresident.

**Example.** John Willow, a citizen of New Zealand, entered the United States on April 1, 1990, as a lawful permanent resident. On August 1, 1992, John ceased to be a lawful permanent resident and returned to New Zealand. During his period of residence, he was present in the United States for at least 183 days in each of three consecutive years (1990, 1991, and 1992). He returned to the United States on October 5, 1995, as a lawful permanent resident. He became a resident before the close of the third calendar year (1995) beginning after the end of his first period of residence (August 1, 1992). Therefore, he is subject to tax under the special rule for the period of nonresidence (August 2, 1992, through October 4, 1995) if it is more than the tax that would normally apply to him as a nonresident alien.

**Special rule.** The tax under this special rule consists of the graduated income tax, alternative minimum tax, and tax on lump-sum distributions from an employees' trust. It is applied only to your gross income effectively connected with a U.S. trade or business (defined

in Chapter 4) and your U.S. source noneffectively connected gross income. For this purpose, U.S. source gross income (defined in Chapter 2) includes gains from the sale or exchange of (1) property (other than stock or debt obligations) located in the United States, and (2) stock issued by a U.S. domestic corporation or debt obligations of U.S. persons or of the United States, a state or political subdivision thereof, or the District of Columbia.

This rule prevents a long-time U.S. resident from disposing of assets free of U.S. tax by leaving the United States for a short period and then becoming a U.S. resident again. The rule applies regardless of the resident's intention to avoid tax. For more information, or if you need specific information regarding your situation, write to: Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

## Effect of Tax Treaties

The rules given here to determine if you are a U.S. resident do not override tax treaty definitions of residency. If you are a dual resident taxpayer, you can still claim the benefits under an income tax treaty. A **dual resident taxpayer** is one who is a resident of both the United States and another country under each country's tax laws. The income tax treaty between the two countries must contain a provision that provides for resolution of conflicting claims of residence. If you choose to claim tax treaty benefits, you are treated as a nonresident alien in figuring your U.S. income tax for the part of the tax year you are considered a dual resident taxpayer. For purposes other than computing your tax, you will be treated as a U.S. resident. For example, the rules discussed here do not affect your residency time periods as discussed later, under *Dual Status Aliens*.

**Information to be reported.** If you are a dual resident taxpayer and you claim treaty benefits, you must timely file a return (including extensions) using Form 1040NR or Form 1040NR-EZ, and compute your tax as a nonresident alien. You must also attach Form 8833, *Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)*, or a similar statement. See *Reporting Treaty Benefits Claimed* in Chapter 9, for more information on reporting treaty benefits.

## Dual Status Aliens

You can be both a nonresident alien and a resident alien during the same tax year. This usually occurs for the year you arrive in or depart from the United States. Aliens who have dual status should see Chapter 6 for information on filing a return for a dual-status tax year.

## First Year of Residency

If you are a U.S. resident for any calendar year, but you were not a U.S. resident at any time during the preceding calendar year, you are a U.S. resident only for the part of the calendar

year that begins on the **residency starting date**. For the part of the year before that date, you are a nonresident alien.

**Substantial presence test.** If you meet the substantial presence test for a calendar year, your **residency starting date** is generally the first day you are present in the United States during that calendar year. However, you do not have to count up to 10 days of actual presence in the United States if on those days you establish that:

- 1) You had a closer connection to a foreign country than to the United States, and
- 2) Your tax home was in that foreign country.

For a discussion of closer connection to a foreign country and tax home, see *Closer Connection to a Foreign Country*, earlier.

In determining whether you can exclude up to 10 days, the following rules apply.

- 1) You can exclude days from more than one period of presence as long as the total days in all periods are not more than 10.
- 2) You cannot exclude any days in a period of consecutive days of presence if all the days in that period cannot be excluded.
- 3) Although you can exclude up to 10 days of presence in determining your residency starting date, you must include those days when determining whether you meet the substantial presence test.

**Example.** Ivan Ivanovich is a citizen of Russia. He came to the United States for the very first time on January 6, 1995, to attend a business meeting and returned to Russia on January 10, 1995. His tax home remained in Russia. On March 1, 1995, he moved to the United States and resided here for the rest of 1995. Ivan is able to establish a closer connection to Russia for the period January 6-10. Thus, his residency starting date is March 1.

**Statement required to exclude up to 10 days of presence.** You must file a statement with the IRS if, for 1995, you are excluding up to 10 days of presence in the United States for purposes of your residency starting date. You must sign and date this statement and include a declaration that it is made under penalties of perjury. The statement must contain the following information (as applicable):

- 1) Your name, address, U.S. taxpayer identification number (if any) and U.S. visa number (if any).
- 2) Your passport number and the name of the country that issued your passport.
- 3) The tax year for which the statement applies.
- 4) The first day that you were present in the United States during 1995.
- 5) The dates of the days you are excluding in figuring your first day of residency.
- 6) Sufficient facts to establish that you have maintained your tax home in and a closer

connection to a foreign country during the period you are excluding.

**How to file the required statement.** Attach the required statement to your 1995 income tax return. If you are not required to file a return, send the statement to the Internal Revenue Service Center, Philadelphia, PA 19255 on or before the due date for filing your tax return. The due date for filing is discussed later in Chapter 7.

**Penalty for not filing the required statement.** If you do not file the required statement as explained above, you cannot claim that you have a closer connection to a foreign country or countries. Therefore, your first day of residency will be the first day you are present in the United States.

You will not be penalized if you can show by clear and convincing evidence that you took reasonable actions to become aware of the requirements for filing the statement and significant steps to comply with those requirements.

**Green card test.** If you meet the green card test at any time during a calendar year, but do not meet the substantial presence test for that year, your **residency starting date** is the first day in the calendar year on which you are present in the United States as a lawful permanent resident.

If you meet **both** the substantial presence test and the green card test, your residency starting date is the earlier of the first day during the year you are present in the United States under the substantial presence test or as a lawful permanent resident.

**Residency during the preceding year.** If you were a U.S. resident during any part of the preceding calendar year and you are a U.S. resident for any part of the current year, you will be considered a U.S. resident at the beginning of the current year. This applies whether you are a resident under the substantial presence test or green card test.

**Example.** Robert Bach is a citizen of Switzerland. He came to the United States as a U.S. resident for the first time on May 1, 1994, and remained until November 5, 1994, when he returned to Switzerland. Robert came back to the United States on March 5, 1995, as a lawful permanent resident and still resides here. In calendar year 1995, Robert's U.S. residency is deemed to begin on January 1, 1995, because he qualified as a resident in calendar year 1994.

## First-Year Choice

If you **do not** meet either the green card test or the substantial presence test for 1994 or 1995 and you did not choose to be treated as a resident for part of 1994, but you meet the substantial presence test for 1996, you can choose to be treated as a U.S. resident for part of 1995. To make this choice, you must:

- 1) Be present in the United States for at least 31 days in a row in 1995, **and**

- 2) Be present in the United States for at least 75% of the number of days beginning with the first day of the 31-day period and ending with the last day of 1995. For purposes of this 75% requirement, you can treat up to 5 days of absence from the United States as days of presence in the United States.

When counting the days of presence in (1) and (2) above, do not count the days you were in the United States under any of the four circumstances discussed earlier under *Days of Presence in the United States*.

If you make the first-year choice, your residency starting date for 1995 is the first day of the earliest 31-day period (described in (1) above) that you use to qualify for the choice. You are treated as a U.S. resident for the rest of the year. For example, if you are present for more than one 31-day period (described in (1) above) and you satisfy condition (2) above for each of those periods, your residency starting date is the first day of the first 31-day period. If you are present for more than one 31-day period (described in (1) above) but you satisfy condition (2) above only for a later 31-day period, your residency starting date is the first day of the later 31-day period.

**Example 1.** Juan DaSilva is a citizen of the Philippines. He came to the United States for the first time on November 1, 1995, and was here on 31 consecutive days (from November 1 through December 1, 1995). Juan returned to the Philippines on December 1 and did not come back to the United States until December 17, 1995. He stayed in the United States for the rest of the year. During 1996, Juan was a resident of the United States under the substantial presence test. Juan can make the first-year choice for 1995 because he was in the United States in 1995 for a period of 31 consecutive days (November 1 through December 1, 1995) and for at least 75% of the days following (and including) the first day of his period of 31 consecutive days (46 total days of presence in the United States divided by 61 days in the period from November 1 through December 31 equals 75.4%). If Juan makes the first-year choice, his residency starting date will be November 1, 1995.

**Example 2.** The facts are the same as in Example 1, except that Juan was absent from the United States on December 24, 25, 29, 30, and 31. He can make the first-year choice for 1995 because up to 5 days of absence are considered days of presence for purposes of the continuous presence requirement.

**How to make the first-year choice.** You make the first-year choice by filing a 1995 Form 1040, *U.S. Individual Income Tax Return*, and attaching a statement. The statement must contain your name and address and specify the following:

- 1) That you are making the first-year choice,
- 2) That you were not a resident in 1994,
- 3) That you are a resident under the substantial presence test in 1996,
- 4) The number of days of presence in the United States during 1996,

- 5) The date or dates of your 31-day period of presence and the period of continuous presence in the United States during 1995, and
- 6) The date or dates of absence from the United States during 1995 that you are treating as days of presence.

You cannot file the form or statement until you meet the substantial presence test for 1996. If you have not met the test for 1996 as of April 15, 1996, you can request an extension of time for filing your 1995 Form 1040 until a reasonable period after you have met that test. To request an extension to file, use Form 4868, *Application for Automatic Extension of Time To File U.S. Individual Income Tax Return*. You should pay with this form the amount of tax you expect to owe for 1995 figured as if you were a nonresident alien for all of 1995. Use Form 1040NR or Form 1040NR-EZ to figure the tax. Enter the tax on line 2a of Form 4868. If you do not pay the tax due, you will be charged interest on any tax not paid by the regular due date of your return, and you may be charged a penalty on the late payment. If you need more time after filing Form 4868, file Form 2688, *Application for Additional Extension of Time To File U.S. Individual Income Tax Return*.

Once you make the first-year choice, you may not revoke it without the approval of the Internal Revenue Service.

**Penalty for not following filing procedures.** If you do not follow the procedures discussed here for making the first-year choice, you will be treated as a nonresident alien for all of 1995 and you will not be allowed to file Form 1040. However, you will not be penalized if you can show by clear and convincing evidence that you took reasonable actions to become aware of the filing procedures and significant steps to comply with the procedures.

## Last Year of Residency

If you are a U.S. resident in the current year but are not a U.S. resident during any part of the following calendar year, you cease to be a U.S. resident on your **residency termination date**. If you meet the following two conditions, your residency termination date is the last day you are present in the United States during the calendar year (or the first day you are no longer a lawful permanent resident of the United States if you meet the green card test).

- 1) You had a closer connection to a foreign country than to the United States for the rest of that calendar year, and
- 2) Your tax home was in that foreign country during the rest of that calendar year.

If you do not meet both of these conditions, your residency termination date is the last day of the calendar year. For a discussion of closer connection to a foreign country and tax home, see *Closer Connection to a Foreign Country*, earlier.

**Statement required to establish your residency termination date.** You must sign and



date this statement and include a declaration that it is made under penalties of perjury. The statement must contain the following information (as applicable):

- 1) Your name, address, U.S. taxpayer identification number (if any) and U.S. visa number (if any).
- 2) Your passport number and the name of the country that issued your passport.
- 3) The tax year for which the statement applies.
- 4) The last day that you were present in the United States during 1995.
- 5) Sufficient facts to establish you have maintained your tax home in and a closer connection to a foreign country following your last day of presence in the United States during 1995 or following the abandonment or rescission of your status as a lawful permanent resident during 1995.
- 6) The date that your status as a lawful permanent resident was abandoned or rescinded.
- 7) Sufficient facts (including copies of relevant documents) to establish that your status as a lawful permanent resident has been abandoned or rescinded.

**How to file the required statement.** Attach the required statement to your 1995 income tax return. If you are not required to file a return, send the statement to the Internal Revenue Service Center, Philadelphia, PA 19255 on or before the due date for filing your income tax return. The due date for filing is discussed later in Chapter 7.

**Penalty for not filing the required statement.** If you do not file the required statement as explained above, you cannot claim that you have a closer connection to a foreign country or countries. Therefore, your last day of residency will be the last day you are present in the United States.

You will not be penalized if you can show by clear and convincing evidence that you took reasonable actions to become aware of the requirements for filing the statement and significant steps to comply with those requirements.

**De minimis presence.** If you are a U.S. resident because of the substantial presence test and you meet both conditions listed at the beginning of *Last Year of Residency*, you do not have to count up to 10 days of actual presence in the United States in determining your residency termination date. In determining whether you can exclude up to 10 days, the following rules apply:

- 1) You can exclude days from more than one period of presence as long as the total days in all periods are not more than 10.
- 2) You cannot exclude any days in a period of consecutive days of presence if all the days in that period cannot be excluded.
- 3) Although you can exclude up to 10 days of presence in determining your residency termination date, you must include those

days when determining whether you meet the substantial presence test.

**Example.** Lola Bovary is a citizen of Malta. She came to the United States for the first time on March 1, 1995, and resided here until August 25, 1995. On December 12, 1995, Lola came to the United States for vacation and stayed here until December 16, 1995, when she returned to Malta. She is able to establish a closer connection to Malta for the period December 12-16. Lola is not a U.S. resident for tax purposes during 1996 and can establish a closer connection to Malta for the rest of calendar year 1995. Lola is a U.S. resident under the substantial presence test because she was present in the United States for 183 days (178 days for the period March 1 to August 25 plus 5 days in December). Lola's residency termination date is August 25, 1995.

**Required statement.** You must file a statement with the IRS if, for 1995, you are excluding up to 10 days of presence in the United States for purposes of your residency termination date. For information on what to include in the statement and how to file it, see *Statement required to exclude up to 10 days of presence*, earlier under *Residency starting date*. For items (4) and (5), provide the information for your **last day** of residency instead of your first day.

**If you meet both** the substantial presence test and green card test for the current year, your residency termination date is the later of the first day you are no longer a lawful permanent resident of the United States or the last day you were physically present in the United States. The other requirements remain the same. You cannot be a U.S. resident at any time during the next calendar year, and for the remainder of the current calendar year:

- 1) Your tax home must have been in a foreign country, and
- 2) You must have maintained a closer connection to that foreign country than to the United States.

**Residency during the next year.** If you are a U.S. resident during any part of the next calendar year and you are a resident during any part of the current year, you will be taxed as a resident through the end of the current year. This applies whether you have a closer connection to a foreign country than the United States during the current year, and whether you are a resident under the substantial presence test or green card test.

### Choosing To Be Taxed as a Resident Alien for the Entire Tax Year

If you are a dual-status alien, you can choose to be treated as a U.S. resident for the entire year if:

- 1) You were a nonresident alien at the beginning of the year,
- 2) You are a resident alien or U.S. citizen at the end of the year,

- 3) At the end of the year, you are married to a U.S. citizen or resident alien, and
- 4) Your spouse joins you in making the choice.

This includes situations in which both you and your spouse were nonresident aliens at the beginning of the tax year and both of you are resident aliens at the end of the tax year.

If you make this choice, you and your spouse are both treated as U.S. residents for the entire year for income tax purposes, and you are both taxed on worldwide income. Making the choice also means that you must file a **joint return** for the year of the choice.

If you make this choice, neither you nor your spouse can make this choice for any later tax year, even if you are separated, divorced, or remarried.

**Making the choice.** You should attach a statement signed by both spouses to your joint return for the year of the choice that contains the following information:

- 1) A declaration that you both qualify to make the choice and that you choose to be treated as U.S. residents for the entire tax year, and
- 2) The name, address, and social security number of each spouse. (If one spouse died, include the name and address of the person who makes the choice for the deceased spouse.)

You generally make this choice when you file your joint return. However, you also can make the choice by filing a joint amended return on Form 1040 or Form 1040A. Be sure to write the word "Amended" across the top of the amended return. If you make the choice with an amended return, you and your spouse must also amend any returns that you may have filed after the year for which you made the choice.

You generally must file the amended joint return within 3 years from the date you filed your original U.S. income tax return or 2 years from the date you paid your income tax for that year, whichever is later.

A similar choice is available if, at the end of your tax year, you are a nonresident alien married to a U.S. citizen or resident. See *Nonresident Spouse Treated as a Resident*, next. If you previously made the choice as a nonresident alien to be treated as a resident as discussed below, and that choice is still in effect, you do not need to make the choice explained here.

**Note:** If you file a joint return under either of these provisions, the special instructions and restrictions for dual-status taxpayers in Chapter 6 do not apply to you.

## Nonresident Spouse Treated as a Resident

If, at the end of your tax year, you are married and one spouse is a U.S. citizen or a resident

alien and the other spouse is a nonresident alien, you can choose to treat the nonresident spouse as a U.S. resident. This includes situations in which one spouse is a nonresident alien at the beginning of the tax year, but a resident alien at the end of the year, and the other spouse is a nonresident alien at the end of the year.

If you make this choice, you and your spouse are treated for income tax purposes as residents for your entire tax year. Neither you nor your spouse can claim tax treaty benefits as a resident of a foreign country for a tax year for which the choice is in effect. You must file a joint income tax return for the year you make the choice, but you and your spouse can file joint or separate returns in later years.

**Example 1.** Pat Smith, a U.S. citizen for all of tax year 1995, is married to Norman, a nonresident alien. Pat and Norman make the choice to treat Norman as a resident alien by attaching a statement to their joint return for 1995. Pat and Norman must report their worldwide income in 1995 and later years unless the choice is ended or suspended. Although Pat and Norman must file a joint return for 1995, they can file joint or separate returns for later years.

**Example 2.** Bob and Sharon Williams are married and both are nonresident aliens. In June 1995, Bob became a resident alien and remained a resident for the rest of the year. Bob and Sharon both choose to be treated as resident aliens by attaching a statement to their 1995 joint return. Bob and Sharon must report their worldwide income in 1995 and later years unless the choice is ended or suspended. Bob and Sharon must file a joint return for 1995, but they can file either joint or separate returns for later years.

## How To Make the Choice

Attach a statement, signed by both spouses, to your joint return for the first tax year for which the choice applies. It should contain the following:

- 1) A declaration that one spouse was a nonresident alien and the other spouse a U.S. citizen or resident alien on the last day of your tax year, and that you choose to be treated as U.S. residents for the entire tax year, and
- 2) The name, address, and social security number of each spouse. (If one spouse died, include the name and address of the person making the choice for the deceased spouse.)

You generally make this choice when you file your joint return. However, you can also make the choice by filing a joint amended return on Form 1040 or Form 1040A. Be sure to write the word "Amended" across the top of the amended return. If you make the choice with an amended return, you and your spouse must also amend any returns that you may have filed after the year for which you made the choice.

You generally must file the amended joint return within 3 years from the date you filed

your original U.S. income tax return or 2 years from the date you paid your income tax for that year, whichever is later.

## Suspending the Choice

The choice to be treated as a resident alien does not apply to any tax year (after the tax year you made the choice) if neither spouse is a U.S. citizen or resident alien at any time during the tax year.

**Example.** Dick Brown was a resident alien on December 31, 1992, and married to Judy, a nonresident alien. They chose to treat Judy as a resident alien and filed joint 1992 and 1993 income tax returns. On January 10, 1994, Dick became a nonresident alien. Judy had remained a nonresident alien throughout the period. Dick and Judy could have filed joint or separate returns for 1994. However, since neither Dick nor Judy is a resident alien at any time during 1995, their choice is suspended for that year. If either has U.S. source income or foreign source income effectively connected with a U.S. trade or business in 1995, they must file separate returns as nonresident aliens. If Dick becomes a resident alien again in 1995, their choice is no longer suspended. For years their choice is not suspended, they must include income received from sources both in and outside the United States in their income for each tax year.

## Ending the Choice

Once made, the choice to be treated as a resident applies to all later years unless suspended (as explained above) or ended in one of the following ways.

- 1) **Revocation.** Either spouse can revoke the choice for any tax year, provided he or she makes the revocation by the due date for filing the tax return for that tax year. The spouse who revokes must attach a signed statement declaring that the choice is being revoked. The statement must include the name, address, and social security number of each spouse. (If one spouse dies, include the name and address of the person who is revoking the choice for the deceased spouse.) The statement also must include a list of any states, foreign countries, and possessions that have community property laws in which either spouse is domiciled or where real property is located from which either spouse receives income. File the statement as follows:
  - a) If the spouse revoking the choice must file a return, attach the statement to the return for the first year the revocation applies,
  - b) If the spouse revoking the choice does not have to file a return, but does file a return (for example, to obtain a refund), attach the statement to the return, or
  - c) If the spouse revoking the choice does not have to file a return and does not

file a claim for refund, send the statement to the Internal Revenue Service Center where you filed the last joint return.

- 2) **Death.** The death of either spouse ends the choice, beginning with the first tax year following the year the spouse died. However, if the surviving spouse is a U.S. citizen or resident and is entitled to the joint tax rates as a surviving spouse, the choice will not end until the close of the last year for which these joint rates may be used. If both spouses die in the same tax year, the choice ends on the first day after the close of the tax year in which the spouses died.
- 3) **Legal separation.** A legal separation under a decree of divorce or separate maintenance ends the choice as of the beginning of the tax year in which the legal separation occurs.
- 4) **Inadequate records.** The Internal Revenue Service can end the choice for any tax year that either spouse has failed to keep adequate books, records, and other information necessary to determine the correct income tax liability, or to provide adequate access to those records.

If the choice is ended for any of these reasons, neither spouse can make a choice in any later tax year.

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## Special Situations

If you are an alien from American Samoa, Puerto Rico, or Cuba there are some special situations you should know about.

**Aliens from American Samoa or Puerto Rico.** If you are a nonresident alien in the United States and a bona fide resident of American Samoa or Puerto Rico during the entire tax year, you are taxed, with certain exceptions, according to the rules for resident aliens of the United States. For more information, see Chapter 5.

If you are a nonresident alien from American Samoa or Puerto Rico who does not qualify as a bona fide resident of American Samoa or Puerto Rico for the entire tax year, you are taxed as a nonresident alien.

Resident aliens who formerly were bona fide residents of American Samoa or Puerto Rico are taxed according to the rules for resident aliens.

**Aliens from Cuba.** Cuban exiles employed by the U.S. Navy at Guantanamo Bay Naval Base who have not established any other legal, economic, or social connections to the United States are transient nonresident aliens for income tax purposes even though they have immigrant visas.

# What Income of Aliens is Taxed?

## Topics

This chapter discusses:

- Income source rules
- Community income

## Useful Items

You may want to see:

### Publication

- ☐ **721** Tax Guide to U.S. Civil Service Retirement Benefits

After you have determined your alien status, you must determine the source of your income. If you are a nonresident alien, whether your income is subject to tax in the United States generally depends on the source of the income. This chapter will help you determine the source of different types of income you may receive during the tax year. This chapter also discusses special rules for married individuals who are domiciled in a country with community property laws.

## Resident Aliens

A resident alien's income is generally subject to tax in the same manner as a U.S. citizen; that is, a resident alien is taxed on and must report income from all sources, including sources outside the United States.

If you are a resident alien, you must report all interest, dividends, wages, or other compensation for services, income from rental property or royalties, and other types of income on your U.S. tax return. You must report these amounts whether from sources within or outside the United States.

## Nonresident Aliens

A nonresident alien usually is subject to U.S. income tax only on certain income from sources within the United States and on certain income connected with the conduct of a trade or business in the United States.

Table 2-1 near the end of this chapter gives the general rules for determining U.S. source income that apply to most nonresident aliens. The following discussions cover the general rules as well as the exceptions to these rules.

## Interest

Generally, income from U.S. sources includes interest on bonds, notes, or other interest-bearing obligations of U.S. residents or domestic corporations. Interest from U.S.

sources also includes interest paid by a domestic or foreign partnership or foreign corporation engaged in a U.S. trade or business at any time during the tax year. The place or manner of payment is immaterial in determining the source of the income. Interest income also includes original issue discount. In addition, all interest received by a nonresident alien individual from a state, the District of Columbia, or the U.S. Government during the tax year is income from U.S. sources.

**Exceptions.** U.S. source interest income does not include the following items:

- 1) Interest paid by a resident alien or a domestic corporation if for the 3-year period ending with the close of the payer's tax year preceding the interest payment at least 80% of the payer's total gross income—
  - a) Is from sources outside the United States, and
  - b) Is attributable to the active conduct of a trade or business by the individual or corporation in a foreign country or a U.S. possession.
- 2) Interest paid by a foreign branch of a domestic corporation or a domestic partnership on deposits or withdrawable accounts with mutual savings banks, cooperative banks, credit unions, domestic building and loan associations, and other savings institutions chartered and supervised as savings and loan or similar associations under federal or state law if the interest paid or credited can be deducted by the association.
- 3) Interest on deposits with a foreign branch of a domestic corporation or domestic partnership, but only if the branch is in the commercial banking business.

If you have any questions concerning any of these exceptions, you should write to the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

## Dividends

In most cases, dividend income received from domestic corporations is U.S. source income. Dividend income from foreign corporations is usually foreign source income. Exceptions to both of these rules are discussed below.

**First exception.** The first exception is for dividends received from a domestic corporation if the corporation elects to take the Puerto Rico and possession tax credit.

**Second exception.** The second exception is for dividends received from a foreign corporation if 25% or more of its total gross income for the 3-year period ending with the close of its tax year preceding the declaration of dividends was effectively connected with a trade or business in the United States. If the corporation was formed less than 3 years before the

declaration, use its total gross income from the time it was formed.

If you receive dividends from a foreign corporation that, for this 3-year period, had 25% or more of its gross income connected with a trade or business in the United States, the part of the dividend payment that is U.S. source income to you is found by multiplying the payment by the following fraction:

$$\frac{\text{Foreign corporation's gross income connected with a U.S. trade or business for the 3-year period}}{\text{Foreign corporation's gross income from all sources}}$$

## Personal Services

All wages and any other compensation for services performed in the United States are considered to be from sources in the United States. The only exception to this rule is discussed in Chapter 4, under *Employees of foreign persons, organizations, or offices*.

If your compensation is for personal services performed both inside and outside the United States, you must figure the amount of income that is for services performed in the United States. You usually do this on a time basis. That is, you must include in gross income as U.S. source income the amount that results from multiplying the total amount of compensation by the following fraction:

$$\frac{\text{Number of days you performed services in the United States}}{\text{Total number of days of service for which you receive payment}}$$

**Example.** Jean Blanc, a citizen and resident of Canada, is a professional hockey player with a U.S. hockey club. Under Jean's contract, he received \$98,500 for 242 days of play during 1995. This includes days spent at pre-season training camp, days during the regular season, and playoff game days. Of the 242 days, Jean spent 194 days performing services in the United States and 48 days playing hockey in Canada. The amount included in Jean's 1995 gross income as U.S. source income is \$78,963, figured as follows:

$$\frac{194}{242} \times \$98,500 = \$78,963$$

**Foreign journalists.** Foreign journalists and newspaper correspondents in the United States who are from a country with which the United States does not have a tax treaty are not exempt from U.S. income tax just because U.S. newspaper correspondents in their country are not required to pay income tax to that country.

However, if you are a foreign journalist and a nonresident alien temporarily in the United States and you meet the requirements in Chapter 4 under *Employees of foreign persons, organizations, or offices*, your income may be tax exempt.

**Reenlistment bonus.** A reenlistment bonus received by a nonresident alien for reenlistment in the U.S. Navy while in a foreign country is income for services performed outside the United States.

**Transportation income.** All income from transportation that begins *and* ends in the United States is treated as derived from sources in the United States. Fifty percent of transportation income from personal services is U.S. source income if the transportation is between the United States and a U.S. possession.

Transportation income is income from the use of a vessel or aircraft. This is true whether the vessel or aircraft is owned, hired, or leased, or the income is from the performance of services directly related to the use of a vessel or aircraft. The term “vessel or aircraft” includes any container used in connection with a vessel or aircraft.

If you are engaged in any other foreign trade, you should consider your wages received for services performed in the United States or its territorial waters as being from sources in the United States. However, see the discussion of *Employees of foreign persons, organizations, or offices* in Chapter 4, and any tax treaty provisions that may apply. For information on how U.S. source transportation income is taxed, see Chapter 4.

## Pensions and Annuities

When you receive a pension from a domestic trust for services performed both in and outside the United States, the amount of the pension that is from U.S. sources is the amount of income earned by the trust and the employer contributions made for services performed in the United States. This applies whether the distribution is made under a qualified or nonqualified stock bonus, pension, profit-sharing, or annuity plan (whether or not funded).

If you performed services as an employee of the United States, you may receive a distribution from the U.S. Government under a plan, such as the Civil Service Retirement Act, that is treated as a qualified pension plan. To the extent the distribution can be attributed to basic U.S. salary for services performed outside the United States, it is treated as income from sources outside the United States, and is not taxable. For more information, get Publication 721, *Tax Guide to U.S. Civil Service Retirement Benefits*.

## Rents or Royalties

Your U.S. source income includes rent and royalty income received during the tax year from property located in the United States or from any interest in that property. Also see *Choice in Treating Real Property Income*, in Chapter 4, for a choice that you can make for this type of income.

Your U.S. source income also includes rents or royalties for the use of, or for the privilege of using, in the United States, intangible property such as patents, copyrights, secret processes and formulas, goodwill, trademarks, franchises, and similar property.

## Real Property

Gross income from sources in the United States includes gains, profits, and income from the sale or other disposition of real property located in the United States.

Real property is land and buildings and generally anything built on, growing on, or attached to land.

## Personal Property

Income from the sale or exchange of personal property by a nonresident alien individual generally has its source in the United States if the individual has a **tax home** in the United States. If the individual does not have a tax home in the United States, the income generally is considered to be from sources outside the United States.

Personal property is property, such as machinery, equipment, or furniture, that is not real property.

**Tax home.** Your tax home is the general area of your main place of business, employment, or post of duty, regardless of where you maintain your family home. Your tax home is the place where you permanently or indefinitely work as an employee or a self-employed individual. If you do not have a regular or main place of business because of the nature of your work, then your tax home is the place where you regularly live. If you do not fit either of these categories, you are considered an itinerant and your tax home is wherever you work.

**Inventory property.** Income from the sale in the United States of inventory property generally has its source within the United States, regardless of where you have your tax home. Income from the sale of inventory property outside the United States (even though you purchased it within the United States) has its source outside the United States. **Inventory property** is personal property that is stock in trade or that is held primarily for sale to customers in the ordinary course of your trade or business.

**Depreciable personal property.** To determine the source of any gain from the sale of depreciable personal property, you must first figure the part of the gain that is not more than the total depreciation adjustments on the property. You allocate this part of the gain to sources in the United States based on the ratio of U.S. depreciation adjustments to total depreciation adjustments. The rest of this part of the gain is considered to be from sources outside the United States.

For this purpose, “U.S. depreciation adjustments” are the depreciation adjustments to the basis of the property that are allowable in figuring taxable income from sources within the United States. However, if the property is used predominantly in the United States during a tax year, all depreciation deductions allowable for that year are treated as U.S. depreciation adjustments. But there are some

exceptions for certain transportation, communications, and other property used internationally.

Gain from the sale of depreciable property that is more than the total depreciation adjustments on the property is sourced as if the property were inventory property, as discussed above.

The **basis of property** usually means the cost (money plus the fair market value of other property or services) of property you acquire. **Depreciation** is an amount deducted to recover the cost or other basis of a trade or business asset over a certain number of years. The amount you can deduct depends on the property’s cost, when you began using the property, how long it will take to recover your cost, and which depreciation method you use.

**Intangible property.** The general rule for determining the source of income from sales of personal property, discussed above, applies to sales of intangibles. Intangible property includes patents, copyrights, secret processes or formulas, goodwill, trademarks, trade names, or other like property. The general rule applies only to the extent the payments for the property do not depend on the productivity, use, or disposition of the intangible. To the extent the payments for the intangible property do depend on the productivity, use, or disposition of the property, their source is determined as though the payments were royalties, as discussed earlier. If payments for goodwill do not depend on its productivity, use, or disposition, their source is the country in which the goodwill was generated.

To the extent gain from the sale of an intangible does not exceed its depreciation adjustments, treat the gain as if the intangible were depreciable personal property, discussed above.

**Sales through offices or fixed places of business.** Despite any of the above rules, if you do not have a tax home in the United States, but you maintain an office or other fixed place of business in the United States, treat the income from any sale of personal property (including inventory property) that is attributable to that office or place of business as being from U.S. sources. However, this rule does not apply to sales of inventory property for use, disposition, or consumption outside the United States if an office or other fixed place of business of the taxpayer outside the United States materially participated in the sale.

If you have a tax home in the United States but maintain an office or other fixed place of business outside the United States, income from sales of personal property, other than inventory, depreciable property, or intangibles, that is attributable to that foreign office or place of business is treated as being from sources outside the United States. However, this rule does not apply unless an income tax of at least 10% of the income from the sale is actually paid to a foreign country.

Table 2-1. **Summary of Source Rules for Income of Nonresident Aliens**

Type of Income:	Source Determined By:
Compensation for personal services	Where services are performed
Dividends	Residence of paying corporation (U.S. domestic or foreign)
Interest	Residence of payor
Rents	Where property is located
Royalties—Natural resources	Where property is located
Royalties—Patents, copyrights, etc.	Where property is used
Pensions	Where services were performed
Sale of inventory property	Where property is sold
Sale of personal property (other than inventory property)	Tax home of seller
Sale of real property	Where property is located

## Community Income

Generally, if you are married and you or your spouse are subject to the community property laws of a foreign country, a U.S. state, or a U.S. possession, you generally must follow those laws to determine the income of yourself and your spouse for U.S. tax purposes. But you must disregard certain community property laws if:

- 1) Both you and your spouse are nonresident aliens, or
- 2) One of you is a nonresident alien and the other is a U.S. citizen or resident and you do not both choose to be treated as U.S. residents (as explained in Chapter 1 under *Nonresident Spouse Treated as a Resident*).

In these cases, you and your spouse must report community income as explained below.

**Earned income** of a spouse, other than trade or business income and a partner's distributive share of partnership income, is treated as the income of the spouse whose services produced the income. That spouse must report all of it on his or her separate return.

**Trade or business income**, other than a partner's distributive share of partnership income, is treated as the income of the person who exercises substantially all of the management and control over the trade or business. That spouse must report all of it on his or her separate return.

**Partnership income (or loss).** A partner's distributive share of partnership income is treated as the income (or loss) of the partner. The partner must report all of it on his or her separate return.

**Income derived from the separate property** of one spouse (and which is not earned income, trade or business income, or partnership distributive share income) is treated as the income of that spouse. That spouse must report all of it on his or her separate return. Use the appropriate community property law to determine what is separate property.

**All other community income** is treated as provided by the applicable community property laws.

## 3.

## Exclusions From Gross Income

### Topics

This chapter discusses:

- Foreign earned income exclusion
- Compensation paid to students and exchange visitors by a foreign employer
- Scholarships and fellowship grants

### Useful Items

You may want to see:

#### Publication

- ☐ **54** Tax Guide for U.S. Citizens and Resident Aliens Abroad

#### Form (and Instructions)

- ☐ **1040NR** U.S. Nonresident Alien Income Tax Return

Resident and nonresident aliens are allowed exclusions from gross income if they meet certain conditions. An exclusion from gross income is generally income you receive that is not included in your U.S. income and is not subject to U.S. tax. This chapter covers some of the more common exclusions allowed to resident and nonresident aliens.

## Resident Aliens

If you are physically present in a foreign country or countries for at least 330 full days during any period of 12 consecutive months, you may qualify to exclude from your income up to \$70,000 of income earned abroad in 1995, plus a housing amount if you are an employee. You may also qualify for these exclusions if you are a bona fide resident of a foreign country and you are a citizen or national of a country with which the United States has an income tax treaty. For more information, see Publication 54, *Tax Guide for U.S. Citizens and Resident Aliens Abroad*.

**Foreign country.** The term "foreign country" means any territory under the sovereignty of a government other than that of the United States. The term also includes territorial waters of the foreign country, the air space over the foreign country, and the seabed and subsoil of submarine areas adjacent to the territorial waters of the foreign country.

## Nonresident Aliens

Nonresident aliens can exclude the following items from their gross income.

### Compensation from a foreign employer.

Nonresident alien students and exchange visitors present in the United States under section 101(a)(15)(F), (J), (M), or (Q) of the Immigration and Nationality Act can exclude from gross income pay received from a foreign employer.

This group includes bona fide students, scholars, trainees, teachers, professors, research assistants, specialists, or leaders in a field of specialized knowledge or skill, or persons of similar description. It also includes the aliens' spouses and minor children if they come with the aliens or come later to join the aliens.

A nonresident alien temporarily present in the United States under section 101(a)(15)(J) of the Immigration and Nationality Act includes an alien individual entering the United States as an **exchange visitor** under the Mutual Educational and Cultural Exchange Act of 1961.

**Foreign employer.** A foreign employer is:

- 1) A nonresident alien individual, foreign partnership, or foreign corporation, or
- 2) An office or place of business maintained in a foreign country or in a U.S. possession by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States.

The term “foreign employer” does not include a foreign government. Pay from a foreign government that is exempt from U.S. income tax is discussed in Chapter 10.

**Income from certain annuities.** Do not include in income any annuity received under a **qualified annuity plan**, or from a **qualified trust** exempt from U.S. income tax if:

- 1) You receive the annuity only because of personal services performed outside the United States while you were a nonresident alien; or personal services performed inside the United States while you were a nonresident alien that meet the three conditions described in *Employees of foreign persons, organizations, or offices*, in Chapter 4, and
- 2) At the time the first amount is paid as an annuity under the plan (or by the trust), 90% or more of the employees for whom contributions or benefits are provided under the annuity plan (or under the plan of which the trust is a part) are citizens or residents of the United States.

If the annuity qualifies under condition (1) but not condition (2) above, you do not have to include the amount in income if:

- 1) You are a resident of a country that gives a substantially equal exclusion to U.S. citizens and residents, or
- 2) You are a resident of a beneficiary developing country under the Trade Act of 1974.

If you are not sure whether the annuity is from a qualified annuity plan or qualified trust, ask the person who made the payment.

**Income affected by treaties.** Income of any kind that is exempt from U.S. tax under a treaty to which the United States is a party is excluded from your gross income. Income on which the tax is only limited by treaty, however, is included in gross income. See Chapter 9.

## Scholarships and Fellowship Grants

If you are a candidate for a degree, you may be able to exclude from your income part or all of the amounts you receive as a scholarship or fellowship grant. The rules discussed here apply to both resident and nonresident aliens.

**Source of grant.** Nonresident aliens must first determine the source of the grant. If a nonresident alien receives a grant that is not from U.S. sources, it is not subject to U.S. tax.

Generally, the source of a scholarship or fellowship grant is the residence of the payer regardless of who actually disburses the funds. However, see *Services to be performed outside the United States*, later.

For example, scholarship or fellowship payments for research or study in the U.S. made by the United States, a noncorporate

U.S. resident, or a domestic corporation, are from U.S. sources. Similar payments from a foreign government or foreign corporation are foreign source payments even though the funds may be disbursed through a U.S. agent. Payments made by an entity designated as a public international organization under the International Organizations Immunities Act are from foreign sources.

**Services to be performed outside the United States.** Scholarship or fellowship grants received by nonresident aliens for services to be performed outside the United States are not U.S. source income.

If you are a nonresident alien and you must include all or part of your grant in your income, see *Students and trainees* in Chapter 4 for information on how this income is taxed.

**How to report.** If you file Form 1040NR, report the total amount of your grant on line 12, and the nontaxable portion, if any, on line 29. If you file Form 1040NR-EZ, report the total amount of your grant on line 5, and the nontaxable portion on line 8.

**Qualified scholarship.** A qualified scholarship is any amount you receive as a scholarship or fellowship grant that you use according to the conditions of the grant for:

- 1) Tuition and fees required to enroll in, or to attend, an educational institution, or
- 2) Fees, books, supplies, and equipment that the educational institution requires for the courses of instruction.

Amounts you receive from a scholarship or fellowship that you use for other expenses, such as room and board or travel, are not excludable from income.

**Terms of grant.** Your scholarship or fellowship can still qualify as tax-free even if the terms do not provide that it only be used for tuition and and course-related expenses. It will qualify if you use the grant proceeds for tuition and course-related expenses. However, if the terms of the grant require its use for other purposes, such as room and board, or specify that the grant cannot be used for tuition or course-related expenses, the amounts received under the grant cannot be excluded from income.

**Candidate for a degree.** The term candidate for a degree means a student (whether full or part-time) who:

- 1) Attends a primary or secondary school or is pursuing a degree at a college or university, or
- 2) Attends an educational institution that is authorized and accredited to provide a program that is acceptable for full credit toward a bachelor's or higher degree, or to provide a program of training to prepare students for gainful employment in a recognized occupation.

**Payment for services.** You cannot exclude from income the portion of any scholarship or fellowship, including any tuition reduction, that represents payment for teaching, research, or other services which the grantor requires as a

condition for receiving the scholarship or fellowship. This is true even if all candidates for a degree are required to perform the services as a condition for receiving the degree.

**Example.** On January 7, 1995, Maria Gomez is notified of a scholarship of \$2,500 for the spring 1995 semester. As a condition for receiving the scholarship, Maria must serve as a part-time teaching assistant. Of the \$2,500 scholarship, \$1,000 represents payment for her services. Assuming that Maria meets all other conditions, she can exclude no more than \$1,500 from income as a qualified scholarship.

## 4.

# How Income of Aliens Is Taxed

## Topics

This chapter discusses:

- Income that is effectively connected with a U.S. trade or business
- Income that is not effectively connected with a U.S. trade or business

## Useful Items

You may want to see:

### Publication

- ☐ **544** Sales and Other Dispositions of Assets
- ☐ **1212** List of Original Issue Discount Instruments

### Form (and Instructions)

- ☐ **6251** Alternative Minimum Tax—Individuals
- ☐ **W-8** Certificate of Foreign Status
- ☐ **Schedule D (Form 1040)** Capital Gains and Losses

Resident and nonresident aliens are taxed in different ways. Resident aliens are generally taxed in the same way as U.S. citizens. Nonresident aliens are taxed based on the source of their income and whether or not their income is effectively connected with a U.S. trade or business. The following discussions will help you determine if income you receive during the tax year is effectively connected with a U.S. trade or business and how it is taxed.

## Resident Aliens

Resident aliens are generally taxed in the same way as U.S. citizens. This means that their worldwide income is subject to U.S. tax and must be reported on their U.S. tax return.

Income of resident aliens is subject to the graduated tax rates that apply to U.S. citizens. Resident aliens use the Tax Table and Tax Rate Schedules located in the Form 1040 instructions, which apply to U.S. citizens.

## Nonresident Aliens

A nonresident alien's income that is subject to U.S. income tax must be divided into two categories:

- 1) Income that **is** effectively connected with a trade or business in the United States, and
- 2) Income that **is not** effectively connected with a trade or business in the United States (discussed under *The 30% Tax*).

The difference between these two categories is that effectively connected income, after allowable deductions, is taxed at **graduated rates**. These are the same rates that apply to U.S. citizens and residents. Income that is not effectively connected is taxed at a **flat 30% (or lower treaty) rate**. This chapter discusses how to determine if your income is effectively connected income and how each category of income is taxed.

Generally, you must be engaged in a trade or business during the tax year to be able to treat income received in that year as effectively connected with that trade or business. However, income you receive from the sale or exchange of property, the performance of services, or any other transaction in another tax year is treated as effectively connected in the year received if it would have been effectively connected in the year the transaction took place or you performed the services.

**Example.** Ted Richards, a nonresident alien, entered the United States in August 1994 to perform personal services in the U.S. office of his overseas employer. He worked in the U.S. office until December 25, 1994, but did not leave this country until January 11, 1995. On January 7, 1995, he received his final pay check for services performed in the United States during 1994. All of Ted's income during his stay here is U.S. source income.

During 1994, Ted was engaged in the trade or business of performing personal services in the United States. Therefore, all amounts paid him in 1994 for services performed in the United States during 1994 are effectively connected with that trade or business during 1994.

The salary payment Ted received in January 1995 is U.S. source income to him in 1995. It is effectively connected with a trade or business in the United States because he was engaged in a trade or business in the United States during 1994 when he performed the services that earned the income.

## Trade or Business in the United States

Whether you are engaged in a trade or business in the United States depends on the nature of your activities. The discussions that follow will help you determine whether you are engaged in a trade or business in the United States.

### Personal Services

If you perform personal services in the United States at any time during the tax year, you usually are considered engaged in a trade or business in the United States. The only exception to this rule follows.

**Employees of foreign persons, organizations, or offices.** If three conditions exist, your performance of personal services in the United States during the time you are a nonresident alien is not considered engaging in a trade or business in the United States. The income from those services is not considered to be from U.S. sources and is tax exempt. If you do not meet **any one** of the conditions, you are considered to be engaged in a trade or business in the United States and your income from personal services performed in the United States is considered to be from U.S. sources.

The three conditions are:

- 1) You perform personal services as an employee of or under a contract with a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in a trade or business in the United States; or you work for an office or place of business maintained in a foreign country or possession of the United States by a U.S. corporation, a U.S. partnership, or a U.S. citizen or resident, and
- 2) You perform these services while you are a nonresident alien temporarily present in the United States for a period or periods of not more than a total of 90 days during the tax year, and
- 3) Your pay for these services is not more than \$3,000.

If your pay for personal services is more than \$3,000, the entire amount is income from a trade or business within the United States. To find if your pay is more than \$3,000, do not include any amounts you get from your employer for advances or reimbursements of business travel expenses, if you were required to and did account to your employer for those expenses. If the advances or reimbursements are more than your expenses, include the excess in income paid to you for personal services performed.

A day means a calendar day during any part of which you are physically present in the United States.

**Example 1.** During 1995, Henry Smythe, a nonresident alien from a nontreaty country, worked for an overseas office of a domestic partnership. Henry, who uses the calendar year as his tax year, was temporarily present in

the United States for 60 days during 1995 performing personal services for the overseas office of the partnership. That office paid him a total gross salary of \$2,800 for those services. During 1995, he was not engaged in a trade or business in the United States.

**Example 2.** The facts are the same as in Example 1, except that Henry's total gross salary for the services performed in the United States during 1995 was \$4,500. He received \$2,875 in 1995, and \$1,625 in 1996. During 1995, he was engaged in a trade or business in the United States because the compensation for his personal services in the United States was more than \$3,000.

**Note:** Many tax treaties modify these conditions. For a general discussion of the possible benefits from a treaty, see *Some Typical Tax Treaty Benefits*, in Chapter 9.

**Compensation** paid to a nonresident alien by a foreign employer for the period the alien is temporarily in the United States with an "F," "J," "M," or "Q" visa is not included in gross income. For more information, see *Compensation from a foreign employer*, in Chapter 3.

### Other Trade or Business Activities

Other examples of being engaged in a trade or business in the United States follow.

**Students and trainees.** You are considered engaged in a trade or business in the United States if you are temporarily present in the United States as a nonimmigrant under subparagraphs (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act. Subparagraph (J) includes a nonresident alien individual admitted to the United States as an **exchange visitor** under the Mutual Educational and Cultural Exchange Act of 1961. Therefore, the taxable part of any scholarship or fellowship grant that is U.S. source income is treated as effectively connected with a trade or business in the United States.

**Business operations.** If you own and operate a business in the United States selling services, products, or merchandise, you are, with certain exceptions, engaged in a trade or business in the United States.

**Partnerships.** If you are a member of a partnership that at any time during the tax year is engaged in a trade or business in the United States, you also are considered to be engaged in a trade or business here even if you are not present in the United States.

**Beneficiary of an estate or trust.** If you are the beneficiary of an estate or trust that is engaged in a trade or business in the United States, you are treated as being engaged in the same trade or business.

**Trading in stocks, securities, and commodities.** If your only U.S. business activity is trading in stocks, securities, or commodities (including hedging transactions) through a U.S.

resident broker or other agent, you are not engaged in a trade or business in the United States.

For transactions in stocks or securities, this applies to any nonresident alien, including a dealer or broker in stocks and securities.

For transactions in commodities, this applies to commodities that are usually traded on an organized commodity exchange and to transactions that are usually carried out at such an exchange.

This discussion does not apply if you have a U.S. office or other fixed place of business at any time during the tax year through which, or by the direction of which, you carry out your transactions in stocks, securities, or commodities.

**Trading for a nonresident alien's own account.** You are not engaged in a trade or business in the United States if trading for your own account in stocks, securities, or commodities is your only U.S. business activity. This applies even if the trading takes place while you are present in the United States or is done by your employee or your broker or other agent.

This does not apply to trading for your own account if you are a dealer in stocks, securities or commodities. This does not necessarily mean, however, that as a dealer you are considered to be engaged in a trade or business in the United States. Determine that based on the facts and circumstances in each case or under the rules given above in *Trading in stocks, securities, and commodities*.

## Effectively Connected Income

If you are engaged in a U.S. trade or business, your income (except for certain investment income discussed later) from all U.S. sources is treated as effectively connected with your U.S. trade or business. Two tests, described later, determine whether certain items of investment income (such as interest, dividends, and royalties) are treated as effectively connected with that business.

In limited circumstances, some kinds of foreign source income may be treated as effectively connected with a trade or business in the United States. For a discussion of these rules, see *Foreign Income*, later.

To determine if any item of income, gain, or loss is effectively connected with a trade or business in the United States, you must consider all factors involved in the receipt of the income. A comprehensive discussion, beyond what is stated here, is outside the scope of this publication. If you are outside the United States and have a question, you should write to: Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024. In the United States, contact your local Internal Revenue Service office.

### General Rule

If you are engaged in a U.S. trade or business, all income, gain, or loss for the tax year that you get from **sources within the United States** (other than certain investment income)

is treated as effectively connected income. This applies whether or not there is any connection between the income and the trade or business being carried on in the United States during the tax year.

### Investment Income

Investment income from U.S. sources that may or may not be treated as effectively connected with a U.S. trade or business generally falls into three categories:

- 1) Fixed or determinable income (interest, dividends, rents, royalties, premiums, annuities, etc.),
- 2) Certain gains (some of which are considered capital gains), and
- 3) Capital gains (and losses).

Use the two tests, described next, to determine whether an item of U.S. source income falling in one of these categories and received during the tax year is effectively connected with your U.S. trade or business. If the tests indicate that the item of income is effectively connected, you must include it with your other effectively connected income. If the item of income is not effectively connected, include it with all other income discussed under *The 30% Tax*, later in this chapter.

**Tests.** The following two tests are the main ones used to determine if income, other than personal service income, is effectively connected with a trade or business in the United States.

**Asset-use test.** This test usually applies when trade or business activities do not directly produce the income, gain, or loss. The asset-use test determines whether the item of income is from assets (property) used in, or held for use in, the trade or business in the United States. This test is used primarily when you manufacture or sell goods in the United States, and receive certain income, such as interest or dividends.

**Business-activities test.** This test determines if the activities of the U.S. trade or business were a material factor in producing the income. This test usually applies when income, gain, or loss comes directly from the active conduct of the trade or business. The business-activities test is most important when:

- 1) Dividends or interest are received by a dealer in stocks or securities,
- 2) Royalties are received in the trade or business of licensing patents or similar property, or
- 3) Service fees are earned by a servicing business.

### Personal Service Income

You usually are engaged in a U.S. trade or business when you perform personal services in the United States except in certain cases (see the earlier discussion of *Personal Services* under *Trade or Business in the United States*. Personal service income you receive in a tax year in which you are engaged in a U.S.

trade or business is effectively connected with a U.S. trade or business. Income received in a year other than the year you performed the services is also effectively connected if it would have been effectively connected if received in the year you performed the services. Personal service income includes wages, salaries, commissions, fees, per diem allowances, and employee allowances and bonuses. The income may be paid to you in the form of cash, services, or property.

If you engaged in a U.S. trade or business only because you perform personal services in the United States during the tax year, income and gains from assets, and gains and losses from the sale or exchange of capital assets are generally not effectively connected with your trade or business.

To be effectively connected, there must be a **direct economic relationship** between your holding of the asset (bond, stock, etc.) from which income results, and your trade or business of performing personal services. A direct economic relationship exists, for example, when you buy stock in a U.S. corporation so that you can perform personal services in the United States for the U.S. corporation.

**Transportation income.** Special rules apply to wages for personal services performed for transportation beginning in the United States and ending in a U.S. possession **or** beginning in a U.S. possession and ending in the United States. The income is effectively connected if you meet the following two conditions:

- 1) You had a fixed place of business in the United States involved in earning the income, and
- 2) At least 90% of your U.S. source transportation income is attributable to regularly scheduled transportation.

If you meet both of these conditions, include your wages with your other effectively connected personal service income. **Regularly scheduled transportation** means that a ship or aircraft follows a published schedule with repeated sailings or flights at regular intervals between the same points for voyages or flights that begin or end in the United States. This definition applies to both scheduled and chartered air transportation. **Fixed place of business** generally means a place, site, structure, or other similar facility through which you engage in a trade or business.

If you do not meet the two conditions above, a 4% tax rate applies. If you receive transportation income subject to the 4% tax, you should figure the tax and show it on line 50 of Form 1040NR. Attach a statement to your return that includes the following information (if applicable):

- 1) Your name, taxpayer identification number, and tax year.
- 2) A description of the types of services performed (whether on or off board).
- 3) Names of vessels or registration numbers of aircraft on which you performed the services.



- 4) Amount of U.S. source transportation income derived from each type of service for each vessel or aircraft for the calendar year.
- 5) Total amount of U.S. source transportation income derived from all types of services for the calendar year.

**Pensions.** If you were engaged in a U.S. trade or business in a tax year because you performed personal services in the United States, and you later receive a pension or retirement pay as a result of these services, the retirement pay is effectively connected income in each year you receive it. This is true whether or not you are engaged in a U.S. trade or business in the year you receive the retirement pay.

## Business Profits and Losses, and Sales Transactions

All profits or losses from U.S. sources that are from the operation of a business in the United States are effectively connected with a trade or business in the United States. For example, profit from the sale in the United States of inventory property purchased either in this country or in a foreign country is effectively connected trade or business income. A share of U.S. source profits or losses of a partnership that is engaged in a trade or business in the United States is also effectively connected with a trade or business in the United States.

## Real Property Gain or Loss

Gains and losses from the sale or exchange of U.S. real property interests (whether or not they are capital assets) are taxed as if you are engaged in a trade or business in the United States. You must treat the gain or loss as effectively connected with that trade or business.

**U.S. real property interest.** This is any interest in real property located in the United States or the Virgin Islands or any interest in a domestic corporation that is a U.S. real property holding corporation. Real property includes:

- 1) Land and unsevered natural products of the land, such as growing crops, timber, mines, wells, and other natural deposits,
- 2) Improvements on land, including buildings, other permanent structures, and structural components of these, and
- 3) Personal property associated with the use of real property, such as farming, mining, forestry, or construction equipment or property used in lodging facilities or rented office space, unless the personal property is—
  - a) Disposed of more than one year before or after the disposition of the real property, or
  - b) Separately sold to persons unrelated either to the seller or to the buyer of the real property.

A corporation is a U.S. real property holding corporation if the fair market value of the corporation's U.S. real property interests are at least 50% of the total fair market value of:

- 1) The corporation's U.S. real property interests, plus
- 2) The corporation's interests in real property located outside the United States, plus
- 3) The corporation's other assets that are used in or held for use in a trade or business.

You generally are subject to tax on the sale of the stock in any domestic corporation unless you establish that the corporation is **not** a U.S. real property holding corporation.

A U.S. real property interest does not include a class of stock of a corporation that is regularly traded on an established securities market, unless you hold more than 5% of the fair market value of that class of stock. An interest in a foreign corporation owning U.S. real property generally is not a U.S. real property interest unless the corporation chooses to be treated as a domestic corporation. If you are outside the United States, you can get more information about this and other rules for establishing that a corporation is not a U.S. real property holding corporation from the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

**Alternative minimum tax.** There may be a minimum tax on your net gain from the disposition of U.S. real property interests. Figure the amount, if any, of this tax on Form 6251, *Alternative Minimum Tax—Individuals*.

**Withholding of tax.** If you dispose of a U.S. real property interest, the buyer may have to withhold tax. See the discussion of *Tax Withheld on Real Property Sales*, in Chapter 8.

If you are outside the United States and need more information, write to the IRS at the address given above.

## Foreign Income

Under limited circumstances, you must treat three kinds of foreign source income as effectively connected with a trade or business in the United States. These circumstances are:

- 1) You must have an office or other fixed place of business in the United States to which the income can be attributed,
- 2) That office or place of business must be a material factor in producing the income, and
- 3) The income must be produced in the ordinary course of the trade or business carried on through that office or other fixed place of business.

An office or other fixed place of business is a **material factor** if it significantly contributes to, and is an essential economic element in, the earning of the income.

The three kinds of foreign source income are as follows:

- 1) Rents and royalties for the use of, or for the privilege of using, intangible personal property located outside the United States or from any interest in such property. Included are rents or royalties for the use, or for the privilege of using, outside the United States, patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, and similar properties if the rents or royalties are from the active conduct of a trade or business in the United States.
- 2) Dividends or interest from the active conduct of a banking, financing, or similar business in the United States, or from a corporation the principal business of which is trading in stocks or securities for its own account.
- 3) Income, gain, or loss from the sale outside the United States—through the U.S. office or other fixed place of business—of stock in trade, property that would be included in inventory if on hand at the end of the tax year, or property held primarily for sale to customers in the ordinary course of business. This will not apply if you sold the property for use, consumption, or disposition outside the United States and an office or other fixed place of business in a foreign country was a material factor in the sale.

## Tax on Effectively Connected Income

Income you receive during the tax year that is effectively connected with your trade or business in the United States is, after allowable deductions, taxed at the rates that apply to U.S. citizens and residents. Generally, you can receive effectively connected income only if you are a nonresident alien engaged in trade or business in the United States. For an exception, see *Choice in Treating Real Property Income*, later. For information on how to compute your U.S. income tax liability, see Chapter 5.

## The 30% Tax

Tax at a 30% (or lower treaty) rate applies to certain items of income or gains from U.S. sources but only if the items are **not** effectively connected with your U.S. trade or business.

## Fixed or Determinable Income

The 30% (or lower treaty) rate applies to the gross amount of U.S. source fixed or determinable annual or periodic gains, profits, or income.

Income is **fixed** when it is paid in amounts known ahead of time. Income is **determinable** whenever there is a basis for figuring the amount to be paid. Income can be **periodic** if it is paid from time to time. It does not have to be paid annually or at regular intervals. Income can be determinable or periodic even if the length of time during which the payments are made is increased or decreased.

Items specifically included as fixed or determinable income are interest (other than

original issue discount), dividends, rents, premiums, annuities, salaries, wages, and other compensation. Other items of income, such as royalties, also may be subject to the 30% tax.

**Government obligations.** Interest on obligations of a state or political subdivision, the District of Columbia, or a U.S. possession, generally is not included in income. Therefore, it is not subject to the 30% tax. However, interest on certain private activity bonds, arbitrage bonds, and certain bonds not in registered form is included in income and may be subject to the 30% tax.

**Portfolio interest** that you receive as a nonresident alien on obligations issued after July 18, 1984, is exempt from the 30% tax. Portfolio interest is interest (including original issue discount) from U.S. sources that is paid on obligations:

- 1) Not in registered form (bearer obligations) that are sold only to foreign investors, and the interest on which is payable only outside the United States and its possessions, and that has on its face a statement that any U.S. person holding the obligation will be subject to limitations under the U.S. income tax laws,
- 2) In registered form that are targeted to foreign markets and the interest on which is paid through financial institutions outside the United States, or
- 3) In registered form that are **not** targeted to foreign markets, if you furnish the payer of the interest (or the withholding agent) a statement that you are not a U.S. person. You can make this statement on a Form W-8, *Certificate of Foreign Status*, or on a substitute form similar to Form W-8. In either case, the statement must be signed under penalties of perjury, must certify that you are not a U.S. citizen or resident, and must include your name and address.

Portfolio interest does not include interest that you receive on an obligation issued by a corporation or a partnership of which you own, respectively, directly or indirectly, 10% or more of the total voting power of all classes of voting stock or 10% of the capital or profits interests.

**Contingent interest.** Portfolio interest also does not include contingent interest. Contingent interest is any of the following:

- 1) Interest that is determined by reference to—
  - a) Any receipts, sales, or other cash flow of the debtor or related person,
  - b) Income or profits of the debtor or related person,
  - c) Any change in value of any property of the debtor or a related person, or
  - d) Any dividend, partnership distributions, or similar payments made by the debtor or a related person.
- 2) Any other type of contingent interest that is identified by the Secretary of the Treasury in regulations.

For the definition of “related person” in connection with any contingent interest, and for the exceptions that apply to interest described in item (1), see subparagraphs (B) and (C) of Internal Revenue Code section 871(h)(4).

The denial of the portfolio interest exemption does not apply to any contingent interest paid or accrued on any indebtedness with a fixed term that was issued—

- 1) On or before April 7, 1993, or
- 2) After April 7, 1993, pursuant to a written binding contract in effect on that date and at all times thereafter before that indebtedness was issued.

**Original issue discount.** If you sold, exchanged, or received a payment on a bond or other debt instrument that was issued at a discount **after** March 31, 1972, all or part of the original issue discount (OID) (other than portfolio interest) may be subject to the 30% tax. The amount of OID is the difference between the stated redemption price at maturity and the issue price of the debt instrument. The 30% tax applies in the following circumstances:

- 1) You received a payment on an obligation. In this case, the amount of OID subject to tax is the OID that accrued while you held the obligation minus the OID previously taken into account. But the tax on the OID cannot be more than the payment minus the tax on the interest payment on the obligation.
- 2) You sold or exchanged the obligation. The amount of OID subject to tax is the OID that accrued while you held the obligation minus the amount already taxed in (1) above.

Report on your return the amount of OID shown on Form 1042-S if you bought the debt instrument at original issue. However, you must recompute your proper share of OID shown on Form 1042-S if any of the following apply:

- 1) You bought the obligation at a premium or paid an acquisition premium.
- 2) The obligation is a stripped bond or a stripped coupon (including zero coupon instruments backed by U.S. Treasury securities).
- 3) You receive a Form 1042-S as a nominee recipient.

For the definition of **premium** and **acquisition premium** and instructions on how to recompute OID, get Publication 1212, *List of Original Issue Discount Instruments*.

If you held a bond or other debt instrument that was issued at a discount **before** April 1, 1972, write to the IRS for further information. See the instructions under *Further information*, in the *Introduction* to this publication.

## Social Security Benefits

A nonresident alien must include 85% of any U.S. social security benefit (and the social security equivalent part of a tier 1 railroad retirement benefit) in U.S. source fixed or determinable annual or periodic income. This income is subject to the 30% tax, unless exempt by treaty.

Under the treaties with Canada, Egypt, Germany, Israel, Italy, Japan, Malta, Romania, and the United Kingdom, U.S. social security benefits received by residents of those countries are exempt from U.S. tax. Under the treaty with India, U.S. social security benefits paid to individuals who are both residents and nationals of India are exempt from tax if they are for services performed for the United States, its subdivisions, or local authorities. Residents of all other countries are subject to tax at the full rate of 30% on 85% of their benefits.

## Sales or Exchanges of Capital Assets

These rules apply only to those capital gains and losses from sources in the United States that are **not** effectively connected with a trade or business in the United States. These rules apply even if you are engaged in a trade or business in the United States. These rules do not apply to the sale or exchange of a U.S. real property interest or to the sale of any property that is effectively connected with a trade or business in the United States. See *Real Property Gain or Loss*, earlier under *Effectively Connected Income*.

A **capital asset** is everything you own except the following: inventory, business accounts or notes receivable, depreciable property used in a trade or business, real property used in a trade or business, certain copyrights, literary or musical or artistic compositions, letters or memoranda, or similar property, and certain U.S. Government publications.

A **capital gain** is a gain on the sale or exchange of a capital asset. A **capital loss** is a loss on the sale or exchange of a capital asset.

**Present in the United States for 183 days or more.** If you have been in the United States for 183 days or more during the tax year, your gains from U.S. sources from the sale or exchange of capital assets that are more than your losses from U.S. sources from these sales or exchanges are taxed at a 30% (or lower treaty) rate. This rule applies even if any of the transactions occur while you are **not** in the United States.

To determine the excess of gains over losses, consider only the amount of your gains and losses that would be recognized and taken into account if effectively connected with your trade or business in the United States during the tax year. Take into account, in arriving at your net gain, all gains and losses treated under U.S. tax laws as gains or losses from the sales or exchanges of properties that are capital assets.

To determine the excess of gains over losses, you **cannot** take the deduction for a capital loss carryover into account. Also, you

must disregard the 50% exclusion for gain from small business stock issued after August 10, 1993.

Losses from sales or exchanges of capital assets that **exceed** similar gains are not allowed.

If you are not engaged in a trade or business in the United States and have not established a tax year for a prior period, your tax year will be the calendar year for purposes of the 183-day rule. Also, you must file your tax return on a calendar-year basis.

**Present in the United States less than 183 days.** If you have been in the United States for less than 183 days during the tax year, gains from sales or exchanges of capital assets are tax exempt unless they are effectively connected with a trade or business in the United States during your tax year.

You may want to read Publication 544, *Sales and Other Dispositions of Assets*. However, use this publication only to determine what is a sale or exchange of a capital asset, or what is treated as such. Specific tax treatment that applies to U.S. citizens or residents generally does not apply to you.

The 183-day rule discussed above does not apply to the following gains:

- 1) Gains on the disposal of timber, coal, or domestic iron ore with a retained economic interest,
- 2) Gains on contingent payments received from the sale or exchange of patents, copyrights, and similar property after October 4, 1966,
- 3) Gains on certain transfers of all substantial rights to, or an undivided interest in, patents if the transfers were made before October 5, 1966, and
- 4) Gains on the sale or exchange of original issue discount obligations.

Aliens outside the United States should send their questions about how these gains are taxed to the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

**Reporting.** You cannot offset losses that are not effectively connected against effectively connected gains. Report your gains and losses from the sales or exchanges of capital assets that are not connected with a trade or business in the United States on page 4 of Form 1040NR. Report gains and losses from sales or exchanges of capital assets (including real property) that are connected with a trade or business in the United States on a separate Schedule D (Form 1040), *Capital Gains and Losses*, and attach it to Form 1040NR.

## Choice in Treating Real Property Income

If you are a nonresident alien and during the tax year you have income from real property located in the United States that you own or

have an interest in and hold for the production of income, you can choose to treat all income from that property as income effectively connected with a trade or business in the United States. The choice applies to all income from real property located in the United States and held for the production of income and to all income from any interest in such property. This includes income from rents, royalties from mines, oil or gas wells, or other natural resources. It also includes gains from the sale or exchange of real property.

You can make this choice only for real property income that is not otherwise connected with your U.S. trade or business.

If you make the choice, you can claim deductions attributable to the real property income and only your net income from real property is taxed.

This choice does not treat a nonresident alien, who is not otherwise engaged in a U.S. trade or business, as being engaged in a trade or business in the United States during the year.

**Making the choice.** Make the initial choice by attaching a statement that you are making the choice to your return, or amended return, for the year of the choice. Include in your statement:

- 1) A complete list of all your real property, or any interest in real property, located in the United States,
- 2) The extent of your ownership in the property,
- 3) The location of the property,
- 4) A description of any major improvements to the property, and
- 5) Details of any previous choices and revocations of the real property income choice.

This choice stays in effect for all later tax years unless you revoke it with the consent of the Internal Revenue Service.

For more information about revoking an initial choice and making another choice, write to the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

- Tax payments and credits
- Special rules for bona fide residents of American Samoa and Puerto Rico

## Useful Items

You may want to see:

### Publication

- ☐ **463** Travel, Entertainment, and Gift Expenses
- ☐ **501** Exemptions, Standard Deduction, and Filing Information
- ☐ **521** Moving Expenses
- ☐ **526** Charitable Contributions
- ☐ **535** Business Expenses
- ☐ **597** Information on the United States–Canada Income Tax Treaty

### Form (and Instructions)

- ☐ **1040** U.S. Individual Income Tax Return
- ☐ **1040NR** U.S. Nonresident Alien Income Tax Return
- ☐ **1040NR-EZ** U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents
- ☐ **2106** Employee Business Expenses
- ☐ **2106-EZ** Unreimbursed Employee Business Expenses
- ☐ **3903** Moving Expenses
- ☐ **4563** Exclusion of Income for Bona Fide Residents of American Samoa

The information in this chapter is not as comprehensive for resident aliens as it is for nonresident aliens. Resident aliens should get publications, forms, and instructions for U.S. citizens, because the information for filing returns for resident aliens is generally the same as for U.S. citizens. The instructions for Form 1040EZ, Form 1040A, or Form 1040 are also helpful for filing a resident alien tax return.

If you are both a nonresident alien and a resident alien in the same tax year, see Chapter 6 for a discussion of dual-status aliens.

## 5.

# Figuring Your Tax

### Topics

This chapter discusses:

- Filing status
- Identification numbers
- Deductions
- Exemptions

## Tax Year

You must figure your income and file a tax return on the basis of an annual accounting period called a tax year. If you have not previously established a fiscal tax year, your tax year is the calendar year. A calendar year is 12 consecutive months ending on December 31. If you have previously established a regular fiscal year (12 consecutive months ending on the last day of a month other than December or a 52-53 week year) and are considered to be a U.S. resident for any calendar year, you will be treated as a U.S. resident for any part of your fiscal year that falls within that calendar year.

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## Filing Status

The rules for filing status are different for resident aliens and nonresident aliens.

### Resident Aliens

Resident aliens can use the same filing statuses available to U.S. citizens.

**Joint return.** Generally, you can file a joint return only if both you and your spouse were resident aliens for the entire tax year, or if you make one of the choices discussed in Chapter 1 under *Choosing to be Taxed As a Resident Alien for the Entire Tax Year, or Nonresident Spouse Treated as a Resident*.

**Qualifying widow(er).** If your spouse died in 1993 or 1994, you have not remarried, and you have a dependent child living with you, you may qualify to use the joint return tax rates. See the instructions for Form 1040 for the rules for filing as a qualifying widow(er) with a dependent child.

**Head of household.** You can qualify as a head of household if:

- 1) You are a resident alien for the entire tax year and married to a nonresident alien,
- 2) You do not choose to treat your spouse as a resident alien, and
- 3) You pay the expenses for a household for a relative other than your spouse, for example, your son, daughter, stepchild, or dependent parent.

You can also qualify as a head of household if you are unmarried or considered unmarried on the last day of the year and you pay more than half the cost of keeping up a home for you and a dependent. (See the instructions for Form 1040 for the rules for qualifying as head of household.)

When you figure your income tax liability, use the same Tax Table and Tax Rate Schedules that U.S. citizens use.

### Nonresident Aliens

If you are a nonresident alien filing Form 1040NR, *U.S. Nonresident Alien Income Tax Return*, you may be able to use one of the filing statuses discussed below. If you are filing Form 1040NR-EZ, you can only claim "Single nonresident alien" or "Married nonresident alien" as your filing status.

**Joint return.** Generally, you cannot file a joint return if either spouse was a nonresident alien at any time during the tax year.

However, nonresident aliens married to U.S. citizens or residents can choose to be treated as U.S. residents and file joint returns. For more information, see *Nonresident Spouse Treated as a Resident*, in Chapter 1.

**Qualifying widow(er).** You may be eligible to file as a qualifying widow(er) and use the joint return tax rates if:

- 1) You were a resident of Canada, Mexico, Japan, or the Republic of Korea, or a U.S. national (defined below),
- 2) Your spouse died in 1993 or 1994, and
- 3) You have a dependent child living with you.

See the instructions for Form 1040NR for the rules for filing as a qualifying widow(er) with a dependent child.

A **U.S. national** is an individual who, although not a U.S. citizen, owes his or her allegiance to the United States. U.S. nationals include American Samoans and Northern Mariana Islanders who chose to become U.S. nationals instead of U.S. citizens.

**Head of household.** You cannot file as head of household if you are a nonresident alien at any time during the tax year. However, if you are married, your spouse can qualify as a head of household if:

- 1) Your spouse is a resident alien or U.S. citizen for the entire tax year,
- 2) You do not choose to be treated as a resident alien, and
- 3) Your spouse pays the expenses for a household for a relative other than you, for example, a son, daughter, stepchild, or dependent parent. A spouse is not a dependent for this purpose.

**Married filing separately.** Married nonresident aliens who are not married to U.S. citizens or residents generally must use the Tax Table column or the Tax Rate Schedule for married filing separate returns when determining the tax on income effectively connected with a U.S. trade or business. They normally cannot use the Tax Table column or the Tax Rate Schedule for single individuals. However, if you are a married resident of Canada, Mexico, Japan, or South Korea, or are a married U.S. national, you may be able to file as single if you lived apart from your spouse during the last 6 months of 1995. See the instructions for Form 1040NR to see if you qualify. U.S. national was defined earlier in this section under *Qualifying widow(er)*.

Nonresident aliens who are married to U.S. citizens or residents can choose to be treated as a resident and file a joint return. See *Nonresident Spouse Treated as a Resident*, in Chapter 1. If you do not make the choice to file jointly, use the Tax Table column or the Tax Rate Schedule for married individuals filing separately.

A nonresident alien estate or trust using Form 1040NR must use Tax Rate Schedule W in the Form 1040NR instructions when determining the tax on income effectively connected with a U.S. trade or business.

**Special rules for aliens from certain U.S. possessions.** A nonresident alien who is a bona fide resident of American Samoa or Puerto Rico for the entire tax year and who is temporarily working in the United States should read *Bona Fide Residents of American*

*Samoa or Puerto Rico*, at the end of this chapter for information about special rules.

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## Identification Number

If you are a resident alien who must file a U.S. income tax return, you must get a taxpayer identification number. If you are a nonresident alien, you may or may not have to get a taxpayer identification number.

**Resident aliens.** You must include your taxpayer identification number on your U.S. income tax return. When you start earning income subject to U.S. tax, you must apply for this number. This is your social security number. Apply for your number on Form SS-5, which you can get at Social Security Administration offices.

**Nonresident aliens.** If you are a nonresident alien engaged in a trade or business in the United States, you must get a taxpayer identification number. Generally, this number is your social security number. Apply for your number using Form SS-5, which you can get at Social Security Administration (SSA) offices. Fill it in and return it to SSA. An incorrect or missing number may delay your refund.

Nonresident aliens who do not have a social security number and are not otherwise required to get one (such as limited partners in a partnership) should use the identification number that the IRS assigned to them. This number is similar to a social security number but begins with the number 9. If 1995 is the first year for which you are filing a tax return and you are not otherwise required to get a social security number, do not make an entry in the space marked "Identifying or social security number." When the IRS receives your return, you will be assigned an identification number. You must use this number when you file tax returns in the future or until you receive a social security number.

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## Reporting Your Income

You must report each item of income that is taxable according to the rules in Chapters 2 and 4. For resident aliens, this includes income from sources both within and outside the United States. For nonresident aliens, this includes both income that is effectively connected with a trade or business in the United States (subject to graduated tax rates) and income from U.S. sources that is not effectively connected (subject to a flat 30% tax rate or lower tax treaty rate).

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## Deductions

Resident and nonresident aliens can claim similar deductions on their U.S. tax returns. However, nonresident aliens generally can claim only deductions related to income that is effectively connected with their U.S. trade or business.

## Resident Aliens

You can claim the same deductions allowed to U.S. citizens if you are a resident alien for the entire tax year. While the discussion that follows contains some of the same general rules and guidelines that apply to you, it is specifically directed toward nonresident aliens. You should get Form 1040 and instructions for more information on how to claim your allowable deductions.

## Nonresident Aliens

You can claim deductions to figure your effectively connected taxable income. You generally cannot claim deductions related to income that is not connected with your U.S. business activities. Except for personal exemptions, and certain itemized deductions, discussed later, you can claim deductions only if and to the extent they are connected with your effectively connected income.

**Ordinary and necessary business expenses.** You can deduct all ordinary and necessary expenses in the operation of your U.S. trade or business to the extent they relate to income effectively connected with that trade or business. The deduction for travel expenses while in the United States is discussed later under *Itemized Deductions*. For information about other business expenses, see Publication 535, *Business Expenses*.

**Losses.** You can deduct losses resulting from transactions that you entered into for profit and that you were not reimbursed for by insurance, etc., if, and to the extent that, they relate to income that is effectively connected with a trade or business in the United States.

### Individual retirement arrangement (IRA).

You may qualify to establish your own retirement arrangement whether or not you are covered by a qualified retirement plan at work. If you are not covered by a retirement plan at work, you can make tax-deductible contributions of up to \$2,000 or your taxable compensation effectively connected with your U.S. trade or business, whichever is less, to an IRA each year. If you are covered by a plan at work, you can make contributions to your own IRA, but you can only deduct these contributions subject to certain limitations.

For more information, see Publication 590, *Individual Retirement Arrangements (IRAs)*.

**Moving expenses.** If you are a nonresident alien temporarily in the United States earning taxable income for performing personal services, you can deduct moving expenses to the United States if:

- 1) You are a full-time employee for at least 39 weeks during the 12 months right after you move, or if you are self-employed, you work full time for at least 39 weeks during the first 12 months and 78 weeks during the first 24 months right after you move, and

- 2) Your new job location is at least 50 miles farther (by the shortest commonly traveled route) from your former home than your former job location was. If you had no former job location, the new job location must be at least 50 miles from your former home.

You cannot deduct the moving expense you have when returning to your home abroad. A nonresident alien cannot deduct expenses of moving to a foreign job site.

Figure your deductible moving expenses to the United States on Form 3903, *Moving Expenses*, and deduct them on line 25 of Form 1040NR.

For more information on the moving expense deduction, see Publication 521, *Moving Expenses*.

**Reimbursements.** If you were reimbursed by your employer for allowable moving expenses, your employer should have excluded these reimbursements from your income. You can only deduct allowable moving expenses that were not reimbursed by your employer or that were reimbursed but the reimbursement was included in your income. For more information, see Publication 521.

**Moving expense or travel expense.** If you deduct moving expenses to the United States, you cannot also deduct travel expenses (discussed later under *Itemized Deductions*) while temporarily away from your tax home in a foreign country. Moving expenses are based on a change in your principal place of business while travel expenses are based on your temporary absence from your principal place of business.

### Keogh retirement plan and self-employed SEP deduction.

If you are self-employed, in addition to deducting contributions to an IRA, you may be able to deduct contributions to a qualified retirement plan that provides retirement benefits for yourself and your common-law employees, if any. To make deductible contributions for yourself, you must have net earnings from self-employment that are effectively connected with your U.S. trade or business.

Get Publication 560, *Retirement Plans for the Self-Employed*, for further information.

### Interest penalty on early withdrawal of savings.

You must include in income all effectively connected interest income you receive or that is credited to your account during the year. Do not reduce it by any penalty you must pay on an early withdrawal from a time savings account. However, if the interest income is effectively connected with your U.S. trade or business during the year, you can deduct the amount of the early withdrawal penalty that the banking institution charged. The Form 1099-INT you receive from the banking institution will show the penalty charged in the *Early withdrawal penalty* block.

## Exemptions

While resident aliens can claim personal exemptions and exemptions for dependents in the same way as U.S. citizens, nonresident aliens generally can claim only a personal exemption for themselves on their U.S. tax return.

## Resident Aliens

You can claim personal exemptions and exemptions for dependents according to the dependency rules for U.S. citizens. You can claim an exemption for your spouse if your spouse had no gross income for U.S. tax purposes and was not the dependent of another taxpayer. You can claim this exemption even if you do not choose to file a joint return, and even if your spouse has not been a resident alien for a full tax year or is an alien who has not come to the United States.

If you file a joint return, your nonresident alien spouse must get a social security number (see *Identification Number*, earlier). If you file a separate return, and your nonresident alien spouse has no social security number and no income, check the "Spouse" block on Form 1040, line 6b. Enter "NRA" to the right of the word "Spouse" and in the block for your spouse's social security number.

You can claim an exemption for each person who qualifies as a dependent according to the rules for U.S. citizens. The dependent must be a citizen or national (defined earlier) of the United States; or be a resident of the United States, Canada, or Mexico for some part of the calendar year in which your tax year begins. Get Publication 501, *Exemptions, Standard Deduction, and Filing Information*, for more information.

**Phase-out of exemptions.** If the adjusted gross income shown on your tax return is more than the amount shown below for your filing status, your deduction for exemptions may be reduced or eliminated. Use the worksheet in your income tax return instructions to figure the amount, if any, you can deduct.

- \$86,025 if married filing separately
- \$114,700 if single
- \$143,350 if head of household
- \$172,050 if married filing jointly or a qualifying widow(er) with dependent child

## Nonresident Aliens

Generally, if you are a nonresident alien engaged in a trade or business in the United States, you can claim only one personal exemption (\$2,500 for 1995).

If you are a resident of Mexico or Canada or a national of the United States (defined earlier), you can also claim a personal exemption for your spouse if your spouse had no gross income for U.S. tax purposes and was not the dependent of another taxpayer. In addition, you can claim exemptions for your dependents who meet certain tests. Residents of Mexico, Canada, or nationals of the United

States must use the same rules as U.S. citizens to determine who is a dependent and for which dependents exemptions can be claimed. See Publication 501 for these rules. For purposes of those rules, dependents who are U.S. nationals meet the citizenship test discussed in Publication 501.

**Residents of Japan or the Republic of Korea.** Nonresident aliens who are residents of Japan or the Republic of Korea may be able to claim exemptions for a spouse and children. The tax treaties with Japan and Korea impose two additional requirements on Japanese or Korean residents:

- 1) The spouse and all children claimed must live with the alien in the United States at some time during the tax year, and
- 2) The additional deduction for the exemptions must be prorated based on the ratio of the alien's U.S. source gross income effectively connected with a U.S. trade or business for the tax year to the alien's entire income from all sources during the tax year.

**Example.** Mr. Sato, a nonresident alien, resident of Japan, lives temporarily in the United States with his wife and two children. During the tax year he receives U.S. compensation of \$9,000. He also receives \$3,000 of income from sources outside the United States that is not effectively connected with his U.S. trade or business. Thus, his total income for the year is \$12,000. Mr. Sato meets all requirements for claiming exemptions for his spouse and two children. The additional deduction is \$5,625, figured as follows:

$$\frac{\$9,000}{\$12,000} \times \$7,500^* = \$5,625$$

\*3 × \$2,500

**Students and business apprentices from India.** Students and business apprentices who are eligible for the benefits of Article 21(2) of the United States–India Income Tax Treaty may be able to claim exemptions for their spouse and dependents.

You can claim an exemption for your spouse if he or she had no gross income during 1995 and is not the dependent of another taxpayer.

You can claim exemptions for each of your dependents **not** admitted to the United States on F-2, J-2, or M-2 visas if they meet the same rules that apply to U.S. citizens. See Publication 501 for these rules.

List your spouse and dependents on line 7c of Form 1040NR. Fill out only columns (1) and (3) for your spouse. Also enter the total on the line to the right of line 7c.

**Phase-out of exemptions.** If the adjusted gross income shown on line 32 of Form 1040NR is more than the amount shown below for your filing status, your deduction for exemptions may be reduced or eliminated. Use the worksheet in the Form 1040NR instructions to figure the amount, if any, you can deduct.

- \$86,025 if married filing separately
- \$114,700 if single
- \$172,050 if a qualifying widow(er) with dependent child

## Social Security Numbers for Dependents

If you claim an exemption for a dependent who was born before November 1, 1995, you must enter his or her social security number in the space provided on your 1995 tax return. If you do not enter it or it is wrong, it will take us longer to issue any refund shown on your return. You may have to pay a \$50 penalty. If your dependent does not have a social security number, a number may be obtained by filing Form SS-5 with the Social Security Administration office. It usually takes about 2 weeks to get a number. If your dependent lives in Canada or Mexico, see Publication 501 for details on how to get a number.

## Itemized Deductions

Nonresident aliens can claim some of the same itemized deductions that resident aliens can claim. However, nonresident aliens can claim itemized deductions only if they have income effectively connected with their U.S. trade or business.

Resident and nonresident aliens may not be able to claim all of their itemized deductions. If your adjusted gross income (line 32 of Form 1040NR) is more than \$114,700 (\$57,350 if married filing separately), use the worksheet in your income tax return instructions to figure the amount you can deduct.

If you are a nonresident alien and you are claiming a deduction for state or local income taxes, you can file Form 1040NR–EZ. If you are claiming any other deduction, you must file Form 1040NR.

## Resident Aliens

You can claim the same itemized deductions as U.S. citizens, using Schedule A of Form 1040. These deductions include certain medical and dental expenses, state and local income taxes and real estate taxes, interest you paid on a home mortgage, charitable contributions, casualty and theft losses, and miscellaneous deductions.

If you do not itemize your deductions, you can claim the standard deduction for your particular filing status. For further information, see Form 1040 and instructions.

## Nonresident Aliens

You can deduct certain itemized deductions if you receive income effectively connected with your U.S. trade or business. These deductions include state and local income taxes, charitable contributions to U.S. organizations, casualty and theft losses, moving expenses incurred before 1994, and miscellaneous deductions. Use Schedule A of Form 1040NR to claim itemized deductions.

Nonresident aliens **cannot** claim the standard deduction. However, see *Students and business apprentices from India*, next.

**Students and business apprentices from India.** A special rule applies to students and business apprentices who are eligible for the benefits of Article 21(2) of the United States–India Income Tax Treaty. You can claim the standard deduction provided you do not claim itemized deductions.

Use Table 6, 7, or 8 in Publication 501 to figure your standard deduction.

**Caution:** If you are married and your spouse files a return and itemizes deductions, you cannot take the standard deduction even if you were age 65 or older or blind.

If you are filing Form 1040NR, enter the standard deduction on line 3 of Schedule A (Form 1040NR). In the space to the left of line 3 write "Standard Deduction Allowed Under U.S.–India Income Tax Treaty." Also enter the amount on line 33 of Form 1040NR. If you are filing form 1040NR–EZ, enter the amount on line 10.

**State and local income taxes.** If during the tax year, you receive income that is connected with a trade or business in the United States, you can deduct state and local income taxes you paid on that income.

**Charitable contributions.** You can deduct your charitable contributions or gifts to qualified organizations subject to certain limits. Qualified organizations include organizations that are religious, charitable, educational, scientific, or literary in nature, or that work to prevent cruelty to children or animals. Certain organizations that promote national or international amateur sports competition are also qualified organizations.

**Foreign organizations.** Contributions made directly to a foreign organization are not deductible. However, you can deduct contributions to a U.S. organization that transfers funds to a charitable foreign organization if the U.S. organization controls the use of the funds or if the foreign organization is only an administrative arm of the U.S. organization.

**Gifts of appreciated property.** If you make a charitable contribution of appreciated property, the fair market value of the property at the time of the contribution is generally the amount of your charitable contribution. However, you must reduce its fair market value by any ordinary income or short-term capital gain you would have realized if you had sold the property for its fair market value. This only applies if the ordinary income or short-term gain would have been taxed as effectively connected income. If the gain would not have been effectively connected income, the gain is treated as a long-term capital gain and the treatment in the following paragraph applies.

You usually can deduct a gift of long-term capital gain property at its fair market value. However, you must reduce a contribution of long-term capital gain property by the gain that would have resulted if the property was sold at

its fair market value at the time of the contribution if:

- 1) You contribute the capital gain property (other than qualified appreciated stock) to certain private nonoperating foundations,
- 2) The capital gain property is tangible personal property that the qualified charity puts to an unrelated use, or
- 3) You choose to limit the amount of your contributions of capital gain property to 50%, instead of 30%, of your adjusted gross income.

Appreciated property is property with a fair market value that is more than your adjusted basis in it.

**Limit.** The amount you can deduct in a tax year is limited in the same way it is for a citizen or resident of the United States.

For a discussion of limits on charitable contributions and other information, get Publication 526, *Charitable Contributions*.

**Casualty and theft losses.** You can deduct your loss from fire, storm, shipwreck, or other casualty, or theft of property even though your property is not connected with a trade or business. However, the property must be located in the United States at the time of the casualty or theft. You can deduct theft losses only in the year in which you discover the loss.

You can deduct the fair market value of the property immediately before the casualty or theft, less its fair market value immediately after the casualty or theft (but not more than its cost or adjusted basis), reduced by any insurance or other compensation. The fair market value of property immediately after a theft is considered zero, since you no longer have the property. You cannot deduct the first \$100 of each casualty or theft loss to property held for personal use. You can deduct only the total of all casualty and theft losses for the year to the extent it is more than 10% of adjusted gross income (line 32, Form 1040NR) for the year.

If your property is covered by insurance, you should file a timely insurance claim for reimbursement. If you do not, you cannot deduct this loss as a casualty or theft loss.

Figure your deductible casualty and theft losses on Form 4684, *Casualties and Thefts*, and deduct them on line 8 of Schedule A, Form 1040NR.

**Job expenses and other miscellaneous deductions.** You can deduct job expenses, such as allowable unreimbursed travel expenses (discussed next), and other miscellaneous deductions. Generally, the allowable deductions must be related to effectively connected income. Other deductible expenses include:

- Union dues,
- Safety equipment and small tools needed for your job,
- Dues to professional organizations,
- Subscriptions to professional journals, and
- Tax return preparation fees.

Most miscellaneous deductions are deductible only to the extent they are more than 2% of your adjusted gross income (line 32, Form 1040NR). For more information on miscellaneous deductions, see the instructions for Form 1040NR.

**Travel expenses.** You may be able to deduct your ordinary and necessary travel expenses while you are temporarily performing personal services in the United States. Generally, a temporary assignment is one that is realistically expected to last (and does in fact last) for one year or less at a single location. You must be able to show you were present in the United States on an activity that required your temporary absence from your regular place of work.

For example, if you have established a “tax home” through regular employment in a foreign country, and intend to return to similar employment in the same country at the end of your temporary stay in the United States, you can deduct reasonable travel expenses you paid. You cannot deduct travel expenses for other members of your family or party.

**Deductible travel expenses.** If you qualify, you can deduct your expenses for:

- 1) Transportation—airfare, local transportation, including train, bus, etc.,
- 2) Lodging—rent paid, utilities (not including telephone), hotel or motel room expenses, and
- 3) Meal expenses—actual expenses allowed if you keep records of the amounts, or, if you do not wish to keep detailed records, you are generally allowed \$26, \$30, \$34, or \$38 a day depending on the date and area of your travel.

You can deduct only 50% of unreimbursed meal expenses, and your total expenses are deductible only to the extent they are more than 2% of adjusted gross income.

Use Form 2106, *Employee Business Expenses*, or Form 2106-EZ, *Unreimbursed Employee Business Expenses*, to report your allowable expenses and to figure the 50% limit mentioned above. The correctly completed form gives you the amount of allowable expenses that you must claim on Schedule A of Form 1040NR and that are subject to a 2% of adjusted gross income (line 32 of Form 1040NR) floor. You compute this limit on line 14 of Schedule A, Form 1040NR.

You cannot deduct an expense, or part of an expense, that is allocable to U.S. tax-exempt income, including income exempt by tax treaty.

**Example.** Irina Oak, a citizen of Poland, resided in the United States from April 1, 1995, until July 31, 1995, to acquire business experience from a U.S. company. During her stay in the United States, she received a salary of \$8,000 from her Polish employer. She received no other U.S. source income. She spent \$3,000 on travel expenses, of which \$1,000 were for meals. None of these expenses were reimbursed. Under Article 18 of the tax treaty with Poland, she excludes \$5,000 of her salary from U.S. income tax. In

filling out Form 2106-EZ, she must reduce her deductible meal expenses by half (\$500). She must reduce the remaining \$2,500 by 62.5% (\$1,563) because she excluded 62.5% (\$5,000 ÷ \$8,000) of her salary. She enters the remaining total of \$937 on line 9 of Schedule A (Form 1040NR). She completes the remaining lines according to the instructions for Schedule A.

**Information.** For more information about deductible expenses, reimbursements, and recordkeeping, get Publication 463, *Travel, Entertainment, and Gift Expenses*.

## Tax Payments and Credits

This discussion covers tax payments and credits for resident aliens, followed by a discussion of the payments and credits for non-resident aliens.

### Resident Aliens

Resident aliens generally report tax withheld or other tax payments and claim tax credits using the same rules that apply to U.S. citizens.

**Child care credit.** You may qualify for this credit if you pay someone to care for your dependent who is under age 13, or your disabled dependent or disabled spouse, so that you can work or look for work. The credit can be as much as 30% (depending on your income) of the amount you paid.

For more information, get Publication 503, *Child and Dependent Care Expenses*, and Form 2441, *Child and Dependent Care Expenses*.

**Credit for the elderly or the disabled.** You can claim this credit on Form 1040 using Schedule R if you are 65 or over or if you retired on permanent and total disability regardless of your age. For further information on this credit, get Publication 524, *Credit for the Elderly or the Disabled*.

**Foreign tax credit.** You can claim a credit, subject to certain limits, for income tax you paid or accrued to a foreign country on foreign source income. You cannot claim a credit for taxes paid or accrued on excluded foreign earned income. To claim a credit for income taxes paid or accrued to a foreign country, file Form 1116, *Foreign Tax Credit*, with your Form 1040.

For more information, get Publication 514, *Foreign Tax Credit for Individuals*.

**Earned income credit.** You may qualify for an earned income credit of up to \$2,094 if your child lived with you in the United States and your earned income and adjusted gross income were each less than \$24,396. If two or more children lived with you in the United States and your earned income and adjusted gross income were each less than \$26,673, your credit could be as much as \$3,110. If you do not have a qualifying child and your earned income and adjusted gross income were each

less than \$9,230, your credit could be as much as \$314. If you are married, you must file a joint return to qualify unless you lived apart from your spouse during the last 6 months of 1995 and you are eligible to file as head of household.

**Advance earned income credit.** You may be able to get advance payments of part of the credit for one child in 1996 instead of waiting until you file your 1996 tax return. Fill out Form W-5, *Earned Income Credit Advance Payment Certificate*. If you expect to qualify for the credit in 1996, give the bottom part of the form to your employer. Your employer will include part of the credit regularly in your pay during 1996.

If you received advance payments of the earned income credit in 1995, you must file a tax return to report the payments. Your Form W-2 will show the amount you received.

**Note:** The earned income credit rules, including the income limit for eligibility, are different for 1996. You must consider these in figuring your advance earned income credit.

For more information, get Publication 596, *Earned Income Credit*.

## Nonresident Aliens

You can claim some of the same credits as resident aliens. You can also take credit for certain taxes you paid, are considered to have paid, or that were withheld from your income. However, some of these credits are allowed only if you receive effectively connected income.

**Child care credit.** You may qualify for this credit if you pay someone to care for your dependent who is under age 13, or your disabled dependent or disabled spouse, so that you can work or look for work. The credit can be as much as 30% (depending on your income) of the amount you paid.

Married nonresident aliens can claim the credit only if they choose to file a joint return with a U.S. citizen or resident spouse as discussed in Chapter 1, or if they qualify as certain married individuals living apart (see *Married Persons Who Live Apart* under *Filing Status and Exemptions for Individuals*, in the Form 1040NR instructions).

**Limits.** There are two limits in figuring the child care credit.

First, the amount of the expense that qualifies for the credit in any tax year cannot be more than your earned income for that tax year. If you are married, the amount of the expense cannot be more than the lesser of your earned income or the earned income of your spouse. Earned income generally means wages, salaries, and professional fees for personal services performed.

Second, the credit is between 20% and 30% (depending on your income) of the amount paid during the tax year. However, the amount of your payments that is eligible for the credit is limited to \$2,400 for one qualifying dependent, or \$4,800 for two or more qualifying dependents. You must subtract from this

\$2,400 (or \$4,800) limit any amount you receive from your employer's dependent care assistance program that you exclude from your income. This will reduce your actual limit to less than \$2,400 (or \$4,800).

For more information, get Publication 503, *Child and Dependent Care Expenses*.

**Foreign tax credit.** If you receive income from sources outside the United States that is effectively connected with a trade or business in the United States, you can claim a credit for any income taxes paid or accrued to any foreign country or U.S. possession on that income.

If you do not have foreign source income effectively connected with a U.S. trade or business, you cannot claim credits against your U.S. tax for taxes paid or accrued to a foreign country or U.S. possession.

You cannot take any credit for taxes imposed by a foreign country or U.S. possession on your U.S. source income if those taxes were imposed because you are a citizen or resident of the foreign country or possession.

If you claim a foreign tax credit, attach to your return a Form 1116, *Foreign Tax Credit*, which contains additional information about the credit and limits.

**Credit for prior year minimum tax.** You may be able to reduce your 1995 tax by this credit if you paid alternative minimum tax in 1994. Get Form 8801, *Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts*, to see if you qualify for the credit.

**Earned income credit.** If you are a nonresident alien for any part of the tax year, you generally cannot get the earned income credit. However, if you are married and elect to file a joint return with a U.S. citizen or resident spouse as discussed in Chapter 1, you may be eligible for the credit.

See the Form 1040NR instructions and Publication 596, *Earned Income Credit*, for more information.

**Withholding from wages.** Any federal income tax withheld from your wages during the tax year while you were a nonresident alien is allowed as a credit against your U.S. income tax liability for the same year. You can claim the credit for income tax withheld whether or not you were engaged in trade or business in the United States during the year, and whether or not the wage payment (or any other payment) was connected with a trade or business in the United States.

**Excess social security tax withheld.** If you have two or more employers, you may be able to claim a credit against your U.S. income tax liability for social security tax withheld in excess of the maximum required. See *Social Security and Medicare Taxes*, in Chapter 8 for more information. Use the worksheet in the Form 1040NR instructions to compute excess social security tax withheld.

**Regulated investment company credit.** If you are a shareholder in a regulated investment company or mutual fund, you can claim a credit for your share of any taxes paid by the company on its undistributed capital gains. You will receive information on Form 2439, *Notice to Shareholder of Undistributed Long-Term Capital Gains*, which you must attach to your return.

**Tax withheld at the source.** You can claim a credit for any tax withheld at the source on investment and other fixed or determinable annual or periodic income paid to you. Fixed or determinable income includes interest, dividend, rental, and royalty income that you do not claim to be effectively connected income. Wage or salary payments can be fixed or determinable income to you, but usually are subject to withholding as discussed above. Taxes on fixed or determinable income are withheld at a 30% rate or at a lower treaty rate.

**Tax withheld on partnership income.** If you are a foreign partner in a partnership, the partnership will withhold tax on your share of effectively connected taxable income from the partnership. The partnership will give you a statement on Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*, showing the tax withheld. A partnership that is publicly traded may withhold on your actual distributions of effectively connected income. In this case the partnership will give you a statement on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*. In either case, claim the tax withheld as a credit on line 59b of Form 1040NR.

**Claiming tax withheld on your return.** When you fill out your tax return, take extra care to enter the correct amount of any tax withheld shown on your information documents. The following table lists some of the more common information documents and shows where to find the amount of tax withheld.

Form	Location of Tax Withheld
RRB-1042S .....	Box 12
SSA-1042S .....	Box 9
W-2 .....	Box 2
W-2c .....	Line 2
1042-S .....	Column (g)
8805 .....	Line 11
8288-A .....	Box 2

## Bona Fide Residents of American Samoa or Puerto Rico

If you are a nonresident alien who is a bona fide resident of American Samoa or Puerto Rico for the entire tax year, you generally are taxed the same as resident aliens. You should



file Form 1040 and report all income from sources both in and outside the United States.

**Residents of Puerto Rico.** If you are a bona fide resident of Puerto Rico for the entire year, you can exclude from gross income all income from sources in Puerto Rico (other than amounts for services performed as an employee of the United States or any of its agencies).

If you report income on a calendar year basis and you do not have wages subject to withholding, file your return and pay your tax by June 15. You must also make your first payment of estimated tax by June 15. You **cannot** file a joint income tax return or make joint payments of estimated tax. However, if you are married to a U.S. citizen or resident, see *Non-resident Spouse Treated as a Resident*, in Chapter 1.

If you earn wages subject to the same withholding rules as U.S. citizens, your U.S. income tax return is due on April 15. Your first payment of estimated tax is also due by April 15. For information on withholding and estimated tax, see Chapter 8.

You **cannot** claim exemptions for dependents who are residents of Puerto Rico unless the dependents are citizens of the United States.

**Residents of American Samoa.** If you are a bona fide resident of American Samoa for the entire year, you can exclude from gross income all income from sources in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (other than amounts for services performed as an employee of the United States or any of its agencies). You do this by filing Form 1040 and attaching Form 4563, *Exclusion of Income for Bona Fide Residents of American Samoa*, to your return.

## 6.

# Dual-Status Tax Year

## Topics

This chapter discusses:

- Income subject to tax
- Restrictions for dual-status taxpayers
- Exemptions
- How to figure the tax
- Form to file
- When and where to file
- How to fill out a dual-status tax form

## Useful Items

You may want to see:

### Publication

- ☐ **503** Child and Dependent Care Credit

- ☐ **514** Foreign Tax Credit for Individuals

- ☐ **524** Credit for the Elderly or the Disabled

- ☐ **575** Pension and Annuity Income (Including Simplified General Rule)

### Form (and Instructions)

- ☐ **1040** U.S. Individual Income Tax Return

- ☐ **1040-C** U.S. Departing Alien Income Tax Return

- ☐ **1040ES** Estimated Tax for Individuals

- ☐ **1040-ES(NR)** U.S. Estimated Tax for Nonresident Alien Individuals

- ☐ **1040NR** U.S. Nonresident Alien Income Tax Return

- ☐ **1116** Foreign Tax Credit

You have a dual-status tax year when you have been both a resident alien and a nonresident alien in the same year. Dual-status does not refer to your citizenship, only to your resident status in the United States. In determining your U.S. income tax liability for a dual-status tax year, different rules apply for the part of the year you are a resident of the United States and the part of the year you are a nonresident.

The most common dual-status tax years are the years of arrival and departure. The part of a tax year **before** you arrive in the United States is a period of nonresidence. The part of the year **after** you arrive in the United States can be a period of residence or nonresidence, depending on the circumstances.

The year of departure can also be a dual-status year. Generally, if you have been a resident alien during the first part of the year, you keep that status until your final departure. After departure you generally become a nonresident alien. However, a resident alien who leaves the United States temporarily and does not abandon the U.S. residence keeps resident alien status even while abroad.

If you are married and choose to be treated as a U.S. resident for the entire year of your arrival, as explained in Chapter 1, the rules of this chapter do not apply to you for that year.

## Tax Year

You must figure your income and file a tax return on the basis of an annual accounting period called a tax year. If you have not previously established a fiscal tax year, your tax year is the calendar year. A calendar year is 12 consecutive months ending on December 31. If you have previously established a regular fiscal year (12 consecutive months ending on the last day of a month other than December, or a 52-53 week year) and are considered to be a U.S. resident for any calendar year, you will be treated as a U.S. resident for any part of your fiscal year that falls within that calendar year.

## Income Subject to Tax

For the part of the year you are a resident alien, you are taxed on income from all sources. For the part of the year you are a nonresident alien, you are taxed on income from U.S. sources and on certain foreign source income treated as effectively connected with a U.S. trade or business. (The rules for treating foreign source income as effectively connected are discussed in Chapter 4 under *Foreign Income*.) When you figure your tax for the year, combine all income taxed at graduated rates whether you received it during the period of nonresidence or the period of residence.

Income from sources outside the United States is taxable if you receive it while you are a resident alien. The income is taxable even if you earned it while you were a nonresident alien or if you became a nonresident alien after receiving it and before the end of the year.

Income from sources outside the United States which is not effectively connected with a trade or business in the United States is not taxable if you receive it while you are a nonresident alien. The income is not taxable even if you earned it while you were a resident alien or if you became a resident alien or a U.S. citizen after receiving it and before the end of the year.

Income from U.S. sources is taxable whether you receive it while a nonresident alien or a resident alien unless specifically exempt under the Internal Revenue Code or a tax treaty provision.

When determining what income is taxed in the United States, you must consider exemptions under U.S. tax law as well as the reduced tax rates and exemptions provided by tax treaties between the United States and certain foreign countries. For a further discussion of tax treaties, see Chapter 9, *Tax Treaty Benefits*.

## Restrictions for Dual-Status Taxpayers

The following restrictions apply if you are filing a tax return for a dual-status tax year.

**1) Standard deduction.** You **cannot** use the standard deduction allowed on Form 1040. However, you can itemize any allowable deductions.

**2) Exemptions.** Your total deduction for the exemptions for your spouse and allowable dependents **cannot** be more than your taxable income (figured without deducting personal exemptions) for the period you are a resident alien.

**3) Head of household.** You **cannot** use the head of household Tax Table column or Tax Rate Schedule.

**4) Joint return.** You **cannot** file a joint return.

**5) Tax rates.** If you are married and a nonresident of the United States for all or part of the

tax year and you do not choose to file jointly as discussed in Chapter 1, you must use the Tax Table column or Tax Rate Schedule for married filing separately to figure your tax on income effectively connected with a U.S. trade or business. You **cannot** use the Tax Table column or Tax Rate Schedules for married filing jointly or single. However, if you are a married resident of Canada, Mexico, Japan, or South Korea, or are a married U.S. national, you may be able to file as single if you lived apart from your spouse during the last 6 months of 1995. See the instructions for Form 1040NR to see if you qualify.

A **U.S. national** is an individual who, although not a U.S. citizen, owes his or her allegiance to the United States. U.S. nationals include American Samoans and Northern Mariana Islanders who chose to become U.S. nationals instead of U.S. citizens.

## Exemptions

As a dual-status taxpayer, you usually will be able to claim your own personal exemption. Subject to the general rules for qualification, you can claim exemptions for your spouse and dependents when you figure taxable income for the part of the year you are a resident alien. The amount you can claim for these exemptions is limited to your taxable income (figured before subtracting exemptions) for the part of the year you are a resident alien. You cannot use exemptions (other than your own) to reduce taxable income to less than zero for that period.

As a dual-status taxpayer, you cannot claim any exemptions if you had no taxable income (figured before subtracting exemptions) for the part of the year that you were a resident alien, and if your income for the part of the tax year that you were a nonresident alien is not effectively connected with a U.S. trade or business.

Special rules apply to exemptions for the part of the tax year a dual-status taxpayer is a nonresident alien if the taxpayer is a resident of Canada, Mexico, Japan, or Korea, is a U.S. national, or is a student or business apprentice from India. For more information, see *Exemptions*, in Chapter 5.

## How To Figure Tax

When you figure your U.S. tax for a dual-status year, you are subject to different rules for the part of the year you are a resident and the part of the year you are a nonresident.

### Income

All income for your period of residence and all income that is effectively connected with a trade or business in the United States for your period of nonresidence, after allowable deductions, is added and taxed at the rates that apply to U.S. citizens and residents. Income that is not connected with a trade or business in the United States for your period of nonresidence is subject to the flat 30% rate or lower

treaty rate. You cannot take any deductions against this income.

**Social security and railroad retirement benefits.** During the part of the year you are a nonresident alien, 85% of any U.S. social security benefits (and the equivalent portion of tier 1 railroad retirement benefits) you receive is subject to the flat 30% tax, unless exempt, or subject to a lower treaty rate. (See *The 30% Tax*, in Chapter 4.)

During the part of the year you are a resident alien, part of the social security and the equivalent portion of tier 1 railroad retirement benefits will be taxed at graduated rates if your modified adjusted gross income plus half these benefits is more than a certain base amount. For a dual-status taxpayer, adjusted gross income does not include income items received during the period of nonresidence.

**The applicable base amount** is zero for married dual-status taxpayers who live with their spouse at any time during the tax year, and \$25,000 for all other dual-status taxpayers (single or married living apart).

Use the social security benefits worksheet in the Form 1040 instructions to help you figure the taxable part of your social security and equivalent tier 1 railroad retirement benefits.

If you received U.S. social security benefits while you were a **nonresident alien**, the Social Security Administration will send you a copy of Form SSA-1042S, *Social Security Benefit Statement*, showing your combined benefits for the entire year and the amount of tax withheld. You will not receive separate statements for the benefits received during your periods of U.S. residence and nonresidence. Therefore, it is important for you to keep careful records of these amounts. You will need this information to properly complete your return and determine your tax liability.

### Credits

You can claim credit against your U.S. income tax liability for certain taxes you paid, are considered to have paid, or that were withheld from your income. These include:

- 1) Tax withheld from wages earned in the United States,
- 2) Taxes withheld at the source from various items of income from U.S. sources other than wages,
- 3) Tax paid with Form 1040-ES, *Estimated Tax for Individuals*, or Form 1040-ES(NR), *U.S. Estimated Tax for Nonresident Alien Individuals*, and
- 4) Tax paid with Form 1040-C, *U.S. Departing Alien Income Tax Return*, at the time of departure from the United States.

Enter the credits for these taxes on the appropriate lines on your return. If there is no special line for one of these credits, enter it in the margin and show what kind of credit it is.

As a dual-status alien, you generally can claim tax credits using the same rules that apply to resident aliens. There are certain restrictions that may apply. These restrictions are

discussed here, along with a brief explanation of credits often claimed by individuals.

**Child care credit.** If you pay someone to care for your dependent who is under age 13, or your disabled dependent or disabled spouse so that you can work or look for work, you may be able to take a tax credit of up to 30% (depending on your income) of the amount you paid.

Married dual-status aliens can claim the credit only if they choose to file a joint return as discussed in Chapter 1, or if they qualify as certain married individuals living apart.

There are two limits in figuring the credit:

- 1) The amount of the expense eligible for the credit in any tax year cannot be more than your earned income for that tax year—if married, the lesser of your earned income or the earned income of your spouse (Earned income generally means wages, salaries, professional fees, etc., for your services.), and
- 2) The credit is between 20% and 30% (depending on your income) of the amount paid during the tax year. However, the amount of your payments that is eligible for the credit is limited to \$2,400 for one qualifying dependent, or \$4,800 for two or more qualifying dependents. You must subtract from this \$2,400 (or \$4,800) limit any amount you receive from your employer's dependent care assistance program that is excluded from your income. This will reduce your actual limit to less than \$2,400 (or \$4,800).

For more information, get Publication 503, *Child and Dependent Care Expenses*.

**Credit for the elderly or the disabled.** You must be a U.S. citizen or resident to claim this credit. You cannot claim the credit if you were a nonresident alien at any time during your tax year. However, the credit can be taken by a dual-status alien who is married to a U.S. citizen or resident and chooses to be treated as a U.S. resident for the entire year. For further information about this credit, get Publication 524, *Credit for the Elderly or the Disabled*.

**Foreign tax credit.** If you have paid or are liable for the payment of income tax to a foreign country on income from foreign sources, you may be able to claim a credit for the foreign taxes.

If you claim the foreign tax credit, you must file Form 1116 with your income tax return. If you need more information, see the instructions for Form 1116 or get Publication 514, *Foreign Tax Credit for Individuals*. You also can write to the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

## Form To File

The U.S. income tax return you must file as a dual-status alien depends on whether you are a resident alien or a nonresident alien at the end of the tax year.

**Resident at end of year.** You must file Form 1040, *U.S. Individual Income Tax Return*, if you are a dual-status taxpayer who becomes a resident during the year and who is a U.S. resident on the last day of the tax year. Write "Dual-Status Return" across the top of the return. Attach a separate schedule to your return to show the income for the part of the year you are a nonresident. You can use Form 1040NR or Form 1040NR-EZ as the separate schedule, but be sure to mark "Dual-Status Statement" across the top.

**Nonresident at end of year.** You must file Form 1040NR or Form 1040NR-EZ if you are a dual-status taxpayer who gives up residence in the United States during the year and who is not a U.S. resident on the last day of the tax year. Write "Dual-Status Return" across the top of the return. Attach a separate schedule to your return to show the income for the part of the year you are a resident. You can use Form 1040 as the separate schedule, but be sure to mark "Dual-Status Statement" across the top.

Any statement must have your name, address, and social security number (taxpayer identification number) on it. You do not need to sign a separate statement or schedule accompanying your return, since your signature on the return also applies to the supporting statements and schedules.

## When and Where To File

If you are a **resident alien** on the last day of your tax year and report your income on a calendar year basis, you must file no later than April 15 of the year following the close of your tax year. If you are a resident alien on the last day of your tax year and report your income on other than a calendar year basis, file your return no later than the 15th day of the 4th month following the close of your tax year. In either case, file your return with the Internal Revenue Service Center, Philadelphia, PA 19255.

If you are a **nonresident alien** on the last day of your tax year and report your income on a calendar year basis, you must file no later than June 15 following the close of your tax year. If you are a nonresident alien on the last day of a tax year and report your income on other than a calendar year basis, file your return no later than the 15th day of the 6th month following the close of your tax year. However, if you are a nonresident alien who receives wages subject to the same withholding rules as U.S. citizens, you must file by the 15th day of the 4th month following the close of your tax year. In any case, file your return

with the Internal Revenue Service Center, Philadelphia, PA 19255.

If the regular due date for filing falls on a Saturday, Sunday, or legal holiday, the due date is the next day which is not a Saturday, Sunday, or legal holiday.

## Illustration of Dual-Status Return

Sam R. Brown is single and a subject of the United Kingdom. He temporarily entered the United States with an H-1 visa to develop a new product line for the Major Product Co. He arrived in the United States March 18, 1995, and left May 25, 1995, returning to his home in England.

The Major Product Co. later offered Sam a permanent job, and he returned to the United States with a permanent visa on September 10, 1995.

During Sam's temporary assignment in the United States, the Major Product Co. paid him \$6,500. He accounted to his employer for his expenses for travel, meals, and lodging while on temporary assignment, and was reimbursed for his expenses. This amount was not included on his wage statement, Form W-2, given to him when he left the United States.

After Sam became permanently employed, his wages for the rest of 1995 were \$21,800, including reimbursement of his moving expenses. He received a separate Form W-2 for this period. His other income received in 1995 was:

Interest income paid by the U.S. Bank (not effectively connected):

March 31 .....	\$45
June 30 .....	\$48
September 30 .....	\$68
December 31 .....	\$89

Dividend income paid by Major Product Co. (not effectively connected):

April 3 .....	\$120
July 3 .....	\$120
October 2 .....	\$120

Interest income (in U.S. dollars) paid by the U.K. Bank:

March 31 .....	\$ 90
June 30 .....	\$110
September 30 .....	\$118
December 31 .....	\$120

Sam paid the following expenses while he was in the United States:

Moving expenses incurred and paid in	
September .....	\$8,300
VA. State income tax .....	\$ 612
Contributions to U.S. charities .....	\$ 360

Before Sam left the United States in May, he filed Form 1040-C, *U.S. Departing Alien Income Tax Return* (see Chapter 11). He owed no tax when he left the United States.

Sam fills in Form 1040 and the statement, Form 1040NR, as follows.

Sam prints his name, social security number, and address on page 1 of Form 1040. He checks "Yes" for the Presidential Election Campaign Fund and "Single" under filing status. He also checks the exemption block for himself and prints "Dual-Status Return" across the top of the form.

Sam prints his name, address, and social security number on page 1 of Form 1040NR. This information should be included on any statement attached to the return. He prints "Dual-Status Statement" across the top of the form.

Sam reports on Form 1040 all income received during the period he was a resident of the United States and the income received during the period he was a nonresident alien that was effectively connected with his U.S. trade or business. This income is taxed at the graduated rates. For information purposes, he also reports on Form 1040NR his salary while he was a nonresident.

Sam reports on Form 1040 the interest income credited to his account by the U.S. Bank and the U.K. Bank in September and December, while he was a U.S. resident. If any of the interest income received while he was a nonresident alien was effectively connected with his U.S. trade or business, he would also report these amounts on Form 1040. If he had paid foreign income tax on the interest income received from the U.K. Bank, he would claim a foreign tax credit on Form 1116.

The dividend income includes only the October dividend, which was received while Sam was a U.S. resident. The dividend income received during his period of nonresidence was not effectively connected with his U.S. trade or business and, therefore, not taxed at the graduated rates.

Sam reports on the attached statement, Form 1040NR, the not effectively connected U.S. income received while he was a nonresident alien. He reports the April and July dividends from the Major Product Co. on line 67a, page 4. He figures the tax on his dividend income and carries it forward to line 47 on Form 1040NR. (The rate of tax on this income is limited to 15% by Article 10 of the U.S.—U.K. income tax treaty. Treaty rates vary from country to country, so be sure to check the provisions in the treaty you are claiming.)

Sam also reports \$36, the amount of tax withheld at source by the Major Product Co. on line 67a, Form 1040NR, and carries it forward to line 59a. Later he will report the amount on Form 1040.

Sam is not required to report the interest credited to his account by the U.S. Bank during the period he was a nonresident alien. Interest on deposits with U.S. banks that is not effectively connected with a U.S. trade or business generally is treated as income from sources in the United States but is not taxable to a nonresident alien. He checks the "Yes" box on page 5, item L, of Form 1040NR, and explains why this income is not included on his return.

The interest income received from the U.K. Bank while Sam was a nonresident alien is foreign source income and not taxable on his U.S. return.

Sam completes all applicable items on page 5 of Form 1040NR. This provides the dates of arrival and departure, types of visas, and information concerning tax treaty benefits that he has claimed.

Sam completes Form 3903 (not illustrated) to figure his moving expense deduction and reports the total on line 24, Form 1040.

Sam cannot claim the standard deduction because he has a dual-status tax year. He reports his itemized deductions on Schedule A (Form 1040). The only itemized deduction he had while he was a nonresident alien was the state income tax withheld from his pay. For information purposes, he lists this amount on line 1, Schedule A, Form 1040NR, in addition to including it on Schedule A, Form 1040.

Sam totals his itemized deductions on line 28, Schedule A (Form 1040). He reports the amount from line 28 of Schedule A (Form 1040) on line 34, Form 1040 and checks the box on line 33c, Form 1040.

Sam enters \$2,500 for one personal exemption on line 36, Form 1040. He subtracts the amount on line 36 from the amount on line 35 to figure his taxable income, line 37.

Sam is now ready to figure the tax on his income taxed at the graduated rates. He uses the column in the Tax Table for single individuals. To this tax, he must add the tax on the income not effectively connected, the income taxed at the 30% or lower treaty rate. Since there is no line on Form 1040 for this computation, he reports the two amounts in the margin in the *Tax Computation* area of Form 1040.

Sam reports the total amount of tax withheld (\$2,700) from his wages on line 55, Form 1040. He includes in this amount the tax withheld at source (from line 59a, Form 1040NR) on dividends paid to him while he was a nonresident alien. He also writes a brief explanation.

For information purposes, Sam also reports on line 52, Form 1040NR, the amount of tax withheld (\$345) from wages earned while a nonresident alien.

Sam compares the total tax on line 54, Form 1040, to the total payments on line 61, to see if he has overpaid his tax or if he owes an additional amount. Since the amount of tax withheld and the amount of tax paid at source are more than his total tax, he has overpaid his tax. He subtracts the amount on line 54 from the amount on line 61 to figure his refund.

Sam checks to be sure that he has completed all parts of Form 1040 that apply to him. He also checks to see if he has completed the necessary parts of the Form 1040NR that he is attaching as a statement. He then signs and dates the return and enters his occupation. Sam mails the return to the Internal Revenue Service Center, Philadelphia, PA 19255.





Form 1040NR (11/99) Page 2

**Schedule A—Itemized Deductions** (See pages 14, 15, and 16.)

1	State income taxes	195	1	195
2	Local income taxes		2	
3	Add lines 1 and 2		3	195
4	Gifts to U.S. Charities		4	
5	Contributions by cash or check. If you made any gift of \$250 or more, see page 15.		5	
6	Other than cash or check. If any gift of \$250 or more, see page 15. If over \$500, you MUST attach Form 8283.		6	
7	Carryover from prior year		7	
8	Add lines 3 through 6		8	
9	Casualty or theft loss(es). Attach Form 4684		9	
10	Unreimbursed employee expenses—job travel, union dues, job education, etc. If required, you MUST attach Form 2106 or Form 2106-EZ. See page 16.		10	
11	Tax preparation fees		11	
12	Other expenses. See page 16 for expenses to deduct here. List type and amount.		12	
13	Add lines 9 through 11		13	
14	Enter the amount from Form 1040NR, line 32. Multiply line 13 by 2% (.02).		14	
15	Subtract line 14 from line 13. If line 14 is more than line 13, enter -0-		15	
16	Other—certain expenses of disabled employees, estate tax on income of decedent, etc. List type and amount.		16	
17	Total itemized deductions		17	195

Form 1040NR (11/99) Page 2

**Section 1: Tax Computation**

28 Amount from line 31 (adjusted gross income)

29 Less itemized deductions from page 3, Schedule A, line 16

30 Subtract line 29 from line 28. If line 30 is more than line 28, enter -0-

31 Exemptions (see page 10)

32 Taxable income. Subtract line 31 from line 28. If line 32 is more than line 31, enter -0-

33 Check if from: ☐ Tax Table ☐ Tax Rate Schedules ☐ Capital Gain Tax Worksheet

34 Tax. Check if from: ☐ Form 9815 (see page 10). Amount from Form 9815, line 4. ☐ Form 9815 (see page 10). Amount from Form 9815, line 4.

35 Additional taxes. Check if from: ☐ Form 4970 ☐ Form 4972.

36 Add lines 33 and 35

37 Credit for child and dependent care expenses. Attach Form 2441

38 Foreign tax credit. Attach Form 1116

39 Other credits (see page 11). Check if from: ☐ Form 3800 ☐ Form 8008 ☐ Form 8001 ☐ Form (specify)

40 Add lines 37 through 39

41 Subtract line 40 from line 36. If line 41 is more than line 36, enter -0-

42 Alternative minimum tax (see page 11). Attach Form 6251

43 Recapture taxes (see page 12). Check if from: ☐ Form 4255 ☐ Form 8811 ☐ Form 8828

44 Tax on income not effectively connected with a U.S. trade or business from page 4, line 40

45 Social security and Medicare tax on tip income not reported to employer. Attach Form 4320

46 Tax on qualified retirement plans, including IRAs. If required, attach Form 5320

47 Transportation tax (see page 12)

48 Household employment taxes. Attach Schedule H (Form 1040)

49 Add lines 44 through 48. This is your total tax.

50 Federal income tax withheld. If any is from Form 1000, check ☐ 51 ☐ 52 ☐ 53 ☐ 54 ☐ 55 ☐ 56 ☐ 57 ☐ 58 ☐ 59 ☐ 60 ☐ 61 ☐ 62 ☐ 63 ☐ 64 ☐ 65 ☐ 66 ☐ 67 ☐ 68 ☐ 69 ☐ 70 ☐ 71 ☐ 72 ☐ 73 ☐ 74 ☐ 75 ☐ 76 ☐ 77 ☐ 78 ☐ 79 ☐ 80 ☐ 81 ☐ 82 ☐ 83 ☐ 84 ☐ 85 ☐ 86 ☐ 87 ☐ 88 ☐ 89 ☐ 90 ☐ 91 ☐ 92 ☐ 93 ☐ 94 ☐ 95 ☐ 96 ☐ 97 ☐ 98 ☐ 99 ☐ 100

51 Amount paid with Form 4965 (extension request)

52 Excess social security and FICA tax withheld (see page 13)

53 Other payments. Check if from: ☐ Form 2439 ☐ Form 4136

54 Credit for amount paid with Form 1040

55 U.S. tax withheld at source

56 From page 4, line 77

57 By partnership under section 1402(a)(1) (from Form 990 or 1042-S)

58 U.S. tax withheld on dividends of U.S. real property interests

59 From Form 1040

60 From Form 1040

61 Add lines 53 through 60. These are your total payments.

62 If line 61 is more than line 50, subtract line 50 from line 61. This is the amount you OVERPAID.

63 Amount of line 62 you want REIMBURSED TO YOU.

64 Amount of line 62 you want APPLIED TO YOUR 1999 ESTIMATED TAX.

65 If line 62 is more than line 61, subtract line 61 from line 62. This is the AMOUNT YOU CASH. For details on how to pay, including what to write on your payment, see page 14.

66 Estimated tax penalty (see page 14). Also, include on line 65

67 Enter the amount of the refund or overpayment you are claiming, and to the best of your knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

68 Your signature

69 Date

70 Preparer's signature

71 Date

72 Preparer's social security no.

73 Preparer's name for use only

74 E.I. No.

75 Preparer's address

## Other Information (If an item does not apply to you, enter "N/A.")

- L** Have you excluded any gross income other than foreign source income not effectively connected with a U.S. trade or business? ☒ Yes ☐ No
- If "Yes," show the amount, nature, and source of the excluded income. Also, give the reason it was excluded. (Do not include amounts shown in item M.) **L** 11,933
- M** If you claimed the benefits of a U.S. income tax treaty with a foreign country, please give the following information:  
 a Country **Malaysia, Kingdom**  
 b Kind and amount of effectively connected income exempt from tax. Also, identify the applicable tax treaty article. Do not enter exempt income on lines 8-15, 18b, and 17b-21 of Form 1040NR. For 1995, include this exempt income on line 22 of Form 1040NR. **11,933**
- N** If you are a resident of Canada, Japan, or the Republic of Korea, or the Republic of Korea, and you are a U.S. citizen or resident alien, did you have a permanent establishment or fixed base (as defined by the tax treaty) in the United States at any time during 1995? ☐ Yes ☒ No
- If you file this return to report community income, give you, spouse's name, address, and social security number. Also, show the address of the Internal Revenue Service Center where his or her return was filed. **N/A**
- O** If you file this return for a trust, does the trust have a U.S. business? ☐ Yes ☒ No  
 If "Yes," give name and address. **N/A**

Tax on Income Not Effectively Connected With a U.S. Trade or Business  
 Attach Forms 1042-S, 832A-1042S, 1042-1042S, 1041 or similar form.

Nature of Income	(a) U.S. tax withheld at source	Enter amount of income under the appropriate rate of tax (see page 17)				(b) Other (specify)	
		(a) 10%	(a) 15%	(a) 30%		%	%
<b>67</b> Dividends paid by:							
a U.S. corporations	<b>67a</b> 36		240				
b Foreign corporations	<b>67b</b>						
<b>68</b> Interest:							
a Mortgage	<b>68a</b>						
b Paid by foreign corporations	<b>68b</b>						
c Other	<b>68c</b>						
<b>69</b> Industrial royalties (patents, trademarks, etc.)	<b>69</b>						
<b>70</b> Motion picture or TV copyright royalties	<b>70</b>						
<b>71</b> Other royalties (copyrights, recording, publishing, etc.)	<b>71</b>						
<b>72</b> Real property income and natural resources royalties	<b>72</b>						
<b>73</b> Pensions and annuities	<b>73</b>						
<b>74</b> Social security benefits	<b>74</b>						
<b>75</b> Gains (include capital gain from line 83 below)	<b>75</b>						
<b>76</b> Other (specify):	<b>76</b>						
<b>77</b> Total U.S. tax withheld at source. Add column (a) of lines 67a through 76. Enter the total here and on Form 1040NR, line 58a.	<b>77</b> 36						
<b>78</b> Add lines 67a through 76 in columns (b)-(e).	<b>78</b>		240				
<b>79</b> Multiply line 78 by rate of tax at top of each column.	<b>79</b>		36				
<b>80</b> Tax on income not effectively connected with a U.S. trade or business. Add columns (b)-(e) of line 79. Enter the total here and on Form 1040NR, line 47.	<b>80</b>						36

## Capital Gains and Losses From Sales or Exchanges of Property

Enter only the capital gains and losses from property sales or exchanges that are from sources within the United States and not effectively connected with a U.S. business. Do not include a gain or loss on disposing of a U.S. real property interest. Report these gains and losses on Schedule D (Form 1095).	(a) Kind of property and description (If necessary, attach statement of descriptive details not shown below)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis	(f) LOSS If (e) is more than (d), subtract (f) from (d)	(g) GAIN If (d) is more than (e), subtract (g) from (d)
Report property sales or exchanges that are effectively connected with a U.S. business on Schedule D (Form 1045), Form 4797, or both.	<b>81</b> Add columns (f) and (g) of line 81.						<b>82</b> ( )
	<b>83</b> Capital gain. Combine columns (f) and (g) of line 82. Enter the net gain here and on line 75 above (if a loss, enter -0-).						<b>83</b>



# What, When, and Where To File

## Topics

This chapter discusses:

- Forms aliens must file
- When and where to file
- Amended returns and claims for refund
- Transportation of currency or monetary instruments

## Useful Items

You may want to see:

### Forms (and Instructions)

- ☐ **1040** U.S. Individual Income Tax Return
- ☐ **1040A** U.S. Individual Income Tax Return
- ☐ **1040EZ** Income Tax Return for Single and Joint Filers With No Dependents
- ☐ **1040NR** U.S. Nonresident Alien Income Tax Return
- ☐ **1040NR-EZ** U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents
- ☐ **4868** Application for Automatic Extension of Time To File U.S. Individual Income Tax Return

What return you must file, as well as when and where you file that return, depends on your status at the end of the tax year as a resident or a nonresident alien.

## Resident Aliens

Resident aliens should file Form 1040EZ, 1040A, or 1040 at the address shown in the instructions for that form. The due date for filing the return and paying any tax due is April 15 of the year following the year for which you are filing a return.

You are allowed an automatic extension to June 15 to file if your main place of business and the home you live in are outside the United States and Puerto Rico on April 15. You can get an extension of time to August 15 to file your return if you file Form 4868, *Application for Automatic Extension of Time To File U.S. Individual Income Tax Return*, by April 15 (June 15 if you qualify for the June 15 extension). See the instructions for the form you are filing for more information.

## Nonresident Aliens

You must file an income tax return if you are:

- 1) A nonresident alien individual engaged or considered to be engaged in a trade or business in the United States, even if you have no income,
- 2) A nonresident alien individual not engaged in trade or business in the United States with U.S. income on which the tax liability was not satisfied by the withholding of tax at the source,
- 3) A representative or agent responsible for filing the return of an individual described in (1) or (2), or
- 4) A fiduciary for a nonresident alien estate or trust.

**Note:** If you were a nonresident alien student or trainee who was temporarily present in the United States under an "F," "J," "M," or "Q" visa, you are considered engaged in a trade or business in the United States. Therefore, item (1) applies to you.

You must also file if you want to:

- 1) Claim a refund of overwithheld or overpaid tax, or
- 2) Claim the benefit of any deductions or credits. For example, if you have no U.S. business activities but have income from real property that you choose to treat as effectively connected income (discussed in Chapter 4), you must timely file a true and accurate return to take any allowable deductions against that income. For information on what is timely, see *When to file for deductions and credits*, later under *When and Where To File*.

Even if you have left the United States and filed a Form 1040-C on departure, you still must file the annual return.

### Form 1040NR-EZ

You can use Form 1040NR-EZ if **all** of the following conditions are met:

- 1) You do not claim any dependents.
- 2) You cannot be claimed as a dependent on someone else's return.
- 3) You are not a married nonresident alien from Canada, Mexico, Japan, or the Republic of Korea, a U.S. national, or an Indian student who is claiming a spousal exemption.
- 4) You were under age 65 on January 1, 1996 and not blind at the end of 1995.
- 5) Your taxable income is less than \$50,000.
- 6) You do not claim any itemized deductions (other than for state and local income taxes).
- 7) Your had only wages, salaries, tips, refunds of state and local income taxes, and scholarship or fellowship grants. (If you had taxable interest or dividend income, you cannot use this form.)

- 8) You are not claiming any exclusions from income other than scholarship and fellowship grants excluded.
- 9) You are not claiming any credits.
- 10) You do not have any "other taxes" (other than line 15 social security and Medicare tax on tip income not reported to employer and line 16 household employment taxes).

If you do not qualify to file Form 1040NR-EZ, you must file Form 1040NR.

### Filing Form 1040NR-EZ or Form 1040NR.

When preparing your annual income tax return, you should use the instructions that go with each form. You can get forms and instructions and, if needed, further information, from your local Internal Revenue Service office.

If you are married and both you and your spouse are required to file, you must each file a **separate** form.

Nonresident aliens who are outside the United States and need further advice about their obligations under the U.S. federal income tax laws may write to the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

## When and Where To File

If you are an employee and you receive wages subject to U.S. income tax withholding, file by the 15th day of the 4th month after your tax year ends. If you file for the 1995 calendar year, your return is due April 15, 1996.

If you are not an employee who receives wages subject to U.S. income tax withholding, you must file by the 15th day of the 6th month after your tax year ends. For the 1995 calendar year, file your return by June 17, 1996 (June 15 falls on a Saturday). For information on when and where to make estimated tax payments, see Chapter 8.

Form 1040NR-EZ and Form 1040NR must be filed with the Internal Revenue Service Center, Philadelphia, PA 19255.

**When to file for deductions and credits.** To get the benefit of any allowable deductions or credits, you must timely file a true and accurate return. For this purpose, a return is timely if it is filed within 16 months of the due date just discussed. However, if you did not file a 1994 tax return and 1995 is not the first year for which you are required to file one, your 1995 return is timely for this purpose if it is filed by the earlier of:

- 1) The date that is 16 months after the due date for filing your 1995 return, or
- 2) The date the IRS notifies you that your 1995 return has not been filed and that you cannot claim certain deductions and credits.

The allowance of the following credits is not affected by this time requirement:

- 1) Credit for withheld taxes,
- 2) Earned income credit,

- 3) Credit for excise tax on certain uses of gasoline and special fuels, and
- 4) Credit for tax paid by a regulated investment company on capital gains.

**Protective return.** If your activities in the United States were limited in 1995 and you do not believe that you had any gross income effectively connected with a U.S. trade or business, you can file a protective return (Form 1040NR) by the deadline explained above. By filing a protective return, you protect your right to receive the benefit of deductions and credits in the event it is later determined that some or all of your income is effectively connected. You are not required to report any effectively connected income or any deductions on the protective return, but you must give the reason the return is being filed.

If you believe some of your activities resulted in effectively connected income, file your return reporting that income and related deductions by the regular due date. To protect your right to claim deductions or credits resulting from other activities, attach a statement to that return explaining that you wish to protect your right to claim deductions and credits if it is later determined that the other activities produced effectively connected income.

You can follow the same procedure if you believe you have no U.S. tax liability because of a U.S. tax treaty. Be sure to also complete items L and M on page 5 of Form 1040NR.

**Aliens from the Virgin Islands.** If you are a bona fide resident of the Virgin Islands and work temporarily in the United States, you must pay your income taxes to the Virgin Islands and file your income tax returns with the Virgin Islands Bureau of Internal Revenue, 9601 Estate Thomas, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00802. Report all income from U.S. sources, as well as income from other sources, on your return. For information on filing Virgin Islands returns, contact the Virgin Islands Bureau of Internal Revenue.

Chapter 8 discusses withholding from U.S. wages of Virgin Islanders.

**Aliens from Guam or the Commonwealth of the Northern Mariana Islands.** If you are a resident of Guam or the Commonwealth of the Northern Mariana Islands (CNMI) on the last day of your tax year, you must file your return and pay any tax due to Guam or the CNMI. Report all income, including income from U.S. sources, on your return. It is not necessary to file a separate U.S. income tax return.

Guam residents should file their Guam returns with the Department of Revenue and Taxation, Government of Guam, Building 13-1 Mariner Avenue, Tiyjan Barrigada, GU 96913.

Residents of the CNMI should file their CNMI income tax returns with the Division of Revenue and Taxation, Commonwealth of the Northern Mariana Islands, P.O. Box 5234, CHRB, Saipan, MP 96950.

If you are a resident of the United States on the last day of your tax year, you should file your return with, and pay any balance of your tax due on income derived from all sources to,

the Internal Revenue Service Center, Philadelphia, PA 19255.

**Penalties.** The law imposes penalties for filing your tax return late or for late payment of any tax due. However, a penalty is not charged if you can show that there was reasonable cause for your filing or paying late.

You may be subject to additional penalties for:

- 1) Not supplying a taxpayer identification number when required.
- 2) Filing a frivolous income tax return.
- 3) Not including a tax shelter identification number on a return when required.

## Amended Returns and Claims for Refund

If you have already filed Form 1040NR and later find changes in your income, deductions, or credits, fill out a new Form 1040NR. Write "Amended" across the top and attach it to Form 1040X, *Amended U.S. Individual Income Tax Return*. File both forms with the Internal Revenue Service Center, Philadelphia, PA 19255. For details on how to fill out Form 1040X, see the *Instructions for Form 1040X*. Ordinarily, an amended return claiming a refund must be filed within 3 years from the date your return was filed or within 2 years from the time the tax was paid, whichever is later. A return filed before the final due date is considered to have been filed on the due date.

## Transportation of Currency or Monetary Instruments

Form 4790, *Report of International Transportation of Currency or Monetary Instruments*, must be filed by each person who physically transports, mails, or ships, or causes to be physically transported, mailed, or shipped, currency or other monetary instruments in a total amount of more than \$10,000 at one time from the United States to any place outside the United States, or into the United States from any place outside the United States. The filing requirement also applies to each person who attempts to transport, mail, or ship the currency or monetary instruments or attempts to cause them to be transported, mailed, or shipped.

The term "monetary instruments" includes coin and currency of the United States or of any other country, money orders, investment securities in bearer form or in such form that title to them passes upon delivery, and negotiable instruments (except warehouse receipts or bills of lading) in bearer form or in such form that title to them passes upon delivery. The term also includes bank checks, travelers' checks, and money orders which are signed but on which the name of the payee has been omitted, but does not include bank checks, travelers' checks, or money orders made payable to the order of a named person which have not been endorsed or which contain restrictive endorsements. Effective January 1,

1996, the definition of monetary instruments will also include bank drafts and other monetary instruments drawn on foreign financial institutions and **not** in bearer form.

A transfer of funds through normal banking procedures (wire transfer) which does not involve the physical transportation of currency or bearer monetary instruments is not required to be reported on Customs Form 4790.

**Filing requirements** for Customs Form 4790 are the following.

**Recipients.** Each person who receives currency or other monetary instruments from a place outside the United States must file Customs Form 4790, within 15 days after receipt, with the Customs officer in charge at any port of entry or departure, or by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, DC 20229.

**Shippers or mailers.** If the currency or other monetary instrument does not accompany the person entering or departing the United States, Customs Form 4790 can be filed by mail with the Commissioner of Customs, Attention: Currency Transportation Reports, Washington, DC 20229, on or before the date of entry, departure, mailing, or shipping.

**Travelers.** Travelers must file Customs Form 4790 with the Customs officer in charge at any Customs port of entry or departure, when entering or departing the United States.

**Penalties.** Civil and criminal penalties are provided for failure to file a report, or if the report contains material omissions or misstatements. Also, the entire amount of the currency or monetary instrument may be subject to seizure and forfeiture.

More information regarding the filing of Customs Form 4790 can be found in the instructions on the back of the form.

# 8.

## Paying Tax Through Withholding or Estimated Tax

### Topics

This chapter discusses:

- How to notify your employer of your alien status
- Income subject to withholding of income tax
- Exemptions from withholding
- Social security and Medicare taxes
- Estimated tax rules

## Useful Items

You may want to see:

### Publication

- ☐ **515** Withholding of Tax on Nonresident Aliens and Foreign Corporations
- ☐ **533** Self-Employment Tax
- ☐ **901** U.S. Tax Treaties

### Form (and Instructions)

- ☐ **W-4** Employee's Withholding Allowance Certificate
- ☐ **W-4P** Withholding Certificate for Pension or Annuity Payments
- ☐ **1040-ES(NR)** U.S. Estimated Tax for Nonresident Alien Individuals
- ☐ **1078** Certificate of Alien Claiming Residence in the United States
- ☐ **4224** Exemption From Withholding of Tax on Income Effectively Connected With the Conduct of a Trade or Business in the United States
- ☐ **8233** Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual
- ☐ **8288-B** Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests

An employer must usually deduct income tax from your taxable wages and pay it to the government. This is called withholding. In addition, for nonresident aliens, tax is withheld at 30% (or a lower treaty rate) on certain payments of income other than taxable wages. Claim the income tax withheld from your wages and other income during the tax year as a credit on your income tax return.

In most cases, an employer must also withhold social security and Medicare taxes from your wages. See *Social Security and Medicare Taxes*, later for details.

Your employer should give you a Form W-2, *Wage and Tax Statement*, which shows the tax withheld and the total wages paid. Payers of other income should give you a Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, to report the income and withheld tax. The withholding laws try to make the amount of tax withheld come close to your tax liability.

Usually the tax liability and the amount of withholding will not be exactly the same, resulting in either a refund or an additional amount due when you file your income tax return. For example, you may have a tax liability for the year of \$500, but \$505 withheld. Your income tax return will show a refund of \$5; and the refund will be paid to you after your return is processed. However, if only \$495 was withheld, then you would have to pay \$5 when you file your return.

**Notification of alien status.** You must let your employer know whether you are a resident or a nonresident alien so your employer can withhold the correct amount of tax from

your wages. If you are a resident alien under the rules discussed in Chapter 1, you should file Form 1078, *Certificate of Alien Claiming Residence in the United States*, with your employer. If you are a nonresident alien under those rules, you do not have to file a form, but it would be helpful if you told your employer that you are a nonresident alien.

If you are a resident alien and you receive income other than wages (such as dividends and royalties) from sources within the United States, you should file Form 1078 with the withholding agent (generally, the payer of the income) so the agent will not withhold tax on the income at the 30% (or lower treaty) rate. If you receive such income as a nonresident alien it is usually subject to withholding at the 30% (or lower treaty) rate.

## Withholding from Compensation

The following discussion generally applies only to nonresident aliens. Tax is withheld from resident aliens in the same manner as U.S. citizens.

Wages and other compensation paid to a nonresident alien for services performed as an employee are usually subject to graduated withholding at the same rates as resident aliens and U.S. citizens. Therefore, your compensation, unless it is specifically excluded from the term "wages" by law, or is exempt from tax by treaty, is subject to graduated withholding.

## Withholding on Wages

If you are an employee and you receive wages subject to graduated withholding, you will be required to fill out a Form W-4, *Employee's Withholding Allowance Certificate*. Nonresident aliens should use the following instructions instead of the instructions on the Form W-4.

Because of the restrictions on a nonresident alien's filing status, the limited number of personal exemptions a nonresident alien is allowed, and the fact that a nonresident alien cannot claim the standard deduction, you should fill out Form W-4 following these instructions:

- 1) Check only "Single" marital status (regardless of your actual marital status).
- 2) Claim only one allowance, unless you are a resident of Canada, Mexico, Japan, or the Republic of Korea, or a U.S. national.
- 3) Request that your employer withhold an additional amount of \$4.00 per week. If your wages are paid based on a two-week pay period, the additional amount will be \$8.00.
- 4) Do **not** claim "Exempt" withholding status.

A **U.S. national** is an individual who, although not a U.S. citizen, owes his or her allegiance to the United States. U.S. nationals include American Samoans, and Northern

Mariana Islanders who chose to become U.S. nationals instead of U.S. citizens.

See *Reduced Withholding on Scholarships and Fellowship Grants* later, for how to fill out Form W-4 if you receive a U.S. source scholarship or fellowship grant.

### Students and business apprentices from India.

If you are eligible for the benefits of Article 21(2) of the United States-India Income Tax Treaty, you may claim additional withholding allowances for the standard deduction and your spouse. You may also claim an additional withholding allowance for each of your dependents not admitted to the United States on F-2, J-2, or M-2 visas. You do not have to request additional withholding.

## Withholding on Pensions

If you receive a pension as a result of personal services performed in the United States, the pension income is treated as effectively connected with a U.S. trade or business. This income will be subject to graduated withholding under the pension withholding rules that apply to U.S. citizens and resident aliens.

You must fill out a Form W-4P, *Withholding Certificate for Pension or Annuity Payments*, to claim withholding allowances and to show marital status for withholding tax purposes. The following guidelines should be followed when filling out your Form W-4P. Check only "Single" marital status, and claim only one withholding allowance unless you are a resident of Canada, Mexico, Japan, or the Republic of Korea, or a U.S. national.

A nonresident alien who receives periodic pension payments or nonperiodic pension distributions outside of the United States can choose not to have tax withheld under the graduated withholding rules. However, if you make this choice, the 30% (or lower treaty rate) withholding tax will apply.

## Withholding on Tip Income

Tips you receive during the year for services performed in the United States are subject to U.S. income tax. Include them in taxable income. In addition, tips received while working for one employer, amounting to \$20 or more in a month, also are subject to the withholding of income and social security taxes.

## Independent Contractors

If there is no employee-employer relationship between you and the person for whom you perform services, your compensation is subject to the 30% (or lower treaty) rate of withholding. However, if you are engaged in a trade or business in the United States during the tax year, your compensation for personal services as an independent contractor (independent personal services) may be entirely or partly exempt from withholding if you reach an agreement with the Internal Revenue Service on the amount of withholding required. Also, the final payment to you during the tax year for independent personal services may be entirely or partly exempt from withholding if you are engaged in a trade or business in the

United States during the year and you file the forms and provide the information required by the IRS.

## Withholding Agreement

An agreement that you reach with the IRS regarding withholding from your compensation for independent personal services is effective for payments covered by the agreement after it is agreed to by all parties. You must agree to timely file an income tax return for the current tax year. For more information, contact the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:C:S, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

**Central withholding agreements.** If you are a nonresident alien entertainer or athlete performing or participating in athletic events in the United States, you may be able to enter into a withholding agreement with the Internal Revenue Service for reduced withholding provided certain requirements are met. Under no circumstances will such a withholding agreement reduce taxes withheld to less than the anticipated amount of income tax liability.

Nonresident alien entertainers or athletes requesting a central withholding agreement must submit the following:

- 1) A list of the names and addresses of the nonresident aliens to be covered by the agreement.
- 2) Copies of all contracts that the aliens or their agents and representatives have entered into regarding the time period and performances or events to be covered by the agreement including, but not limited to, contracts with:
  - a) Employers, agents, and promoters,
  - b) Exhibition halls,
  - c) Persons providing lodging, transportation, and advertising, and
  - d) Accompanying personnel, such as band members or trainers.
- 3) An itinerary of dates and locations of all events or performances scheduled during the period to be covered by the agreement.
- 4) A proposed budget containing itemized estimates of all gross income and expenses for the period covered by the agreement, including any documents to support these estimates.
- 5) The name, address, and telephone number of the person the IRS should contact if additional information or documentation is needed.
- 6) The name, address, and employer identification number of the agent or agents who will be the central withholding agents for the aliens and who will enter into a contract with the IRS. A central withholding agent ordinarily receives contract payments, keeps books of account for the aliens covered by the agreement, and pays expenses (including tax liabilities) for

the aliens during the period covered by the agreement.

When the IRS approves the estimated budget and the designated central withholding agents, the Associate Chief Counsel (International) will prepare a withholding agreement. The agreement must be signed by each withholding agent, each nonresident alien covered by the agreement, and the Assistant Commissioner (International).

Generally, each withholding agent must agree to withhold income tax from payments made to the nonresident alien; to pay over the withheld tax to the IRS on the dates and in the amounts specified in the agreement; and to have the IRS apply the payments of withheld tax to the withholding agent's Form 1042 account. Each withholding agent will be required to file Form 1042 and Form 1042-S for each tax year in which income is paid to a nonresident alien covered by the withholding agreement. The IRS will credit the withheld tax payments, posted to the withholding agent's Form 1042 account, in accordance with the Form 1042-S. Each nonresident alien covered by the withholding agreement must agree to file Form 1040NR.

A request for a central withholding agreement should be sent to the following address at least 90 days before the agreement is to take effect:

Internal Revenue Service  
Chief, Special Procedures Section  
CP:IN:D:C:C:SPS  
Room 3311  
950 L'Enfant Plaza South, S.W.  
Washington, DC 20024

**Final payment exemption.** Your final payment of compensation during the tax year for independent personal services may be entirely or partly exempt from withholding. This exemption is available only once during your tax year and applies to a maximum of \$5,000 of compensation. To obtain this exemption, you or your agent must give the following statements and information to the Assistant Commissioner (International):

- 1) A statement by each withholding agent from whom you have received gross income effectively connected with a trade or business in the United States during the tax year, showing the amount of income paid and the tax withheld. Each statement must be signed by the withholding agent and verified by a declaration that it is made under penalties of perjury.
- 2) A statement by the withholding agent from whom you expect to receive the final payment of compensation, showing the amount of the payment and the amount of tax that would be withheld if a final payment exemption were not granted. This statement must also be signed by the withholding agent and verified by a declaration that it is made under penalties of perjury.

- 3) A statement by you that you do not intend to receive any other income effectively connected with a trade or business in the United States during the current tax year.
- 4) The amount of tax that has been withheld or paid under any other provision of the Internal Revenue Code or regulations for any income effectively connected with your trade or business in the United States during the current tax year.
- 5) The amount of your outstanding tax liabilities, if any, including interest and penalties, from the current tax year or prior tax periods.
- 6) Any provision of an income tax treaty under which a partial or complete exemption from withholding may be claimed, the country of your residence, and a statement of sufficient facts to justify an exemption under the treaty.
- 7) A statement signed by you, and verified by a declaration that it is made under penalties of perjury, that all the information given is true and that to your knowledge no relevant information has been omitted.

If satisfied with the information, the IRS will determine the amount of your tentative income tax for the tax year on gross income effectively connected with your trade or business in the United States. Ordinary and necessary business expenses can be taken into account if proven to the satisfaction of the Assistant Commissioner (International).

The IRS will send you a letter, directed to the withholding agent, showing the amount of the final payment of compensation that is exempt from withholding and the amount that can be paid to you because of the exemption. You must give two copies of the letter to the withholding agent and must also attach a copy of the letter to your income tax return for the tax year for which the exemption is effective.

## Allowance for Personal Exemption

Withholding on payments for independent personal services is generally based on the amount of your compensation payment minus the value of **one** exemption (\$2,550 for 1996).

To determine the income for independent personal services performed in the United States to which the 30% (or lower treaty) rate will apply, one personal exemption is allowed a nonresident alien who is **not** a U.S. national and is **not** a resident of Canada, Mexico, Japan, or South Korea. For purposes of 30% withholding, the exemption is prorated at \$6.97 a day in 1996 for the period that labor or personal services are performed in the United States. To claim an exemption from withholding on the personal exemption amount, fill out the applicable parts of Form 8233, *Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual*, and give it to the withholding agent.

**Example.** Eric Schmidt, who is a resident of Germany, worked under a contract with a U.S. firm (not as an employee) in the United

States for 100 days during 1996 before returning to his country. He earned \$6,000 for the services performed (not considered wages) in the United States. Eric is married and has three dependent children. His wife is not employed and has no income subject to U.S. tax. The deduction to be allowed against the income for his personal services performed within the United States in 1996 is \$697 (100 days × \$6.97), and withholding at 30% is applied against the balance. Thus, \$1,590.90 in tax is withheld from Eric's earnings (30% of \$5,303).

**Residents of Canada, Mexico, Japan, or Korea, or U.S. nationals.** If you are a nonresident alien who is a resident of Canada, Mexico, Japan, or South Korea, or who is a national of the United States, you are subject to the same 30% withholding on your compensation for independent personal services performed in the United States. However, if you are a U.S. national or a resident of Canada or Mexico, you are allowed the same personal exemptions as U.S. citizens. For the 30% (or lower treaty rate) withholding, you can take \$6.97 per day for each allowable exemption in 1996. If you are a resident of Japan or Korea, you are allowed personal exemptions for yourself and for your spouse and children who live with you in the United States at any time during the tax year. However, the additional exemptions for your spouse and children must be further prorated as explained in Chapter 5 under *Exemptions*.

**Students and business apprentices from India.** If you are eligible for the benefits of Article 21(2) of the United States–India Income Tax Treaty, you are allowed an exemption for your spouse. You are also allowed an exemption for each dependent not admitted to the United States on F-2, J-2, or M-2 visas. For the 30% (or lower treaty rate) withholding on compensation for independent personal services performed in the United States, you are allowed \$6.97 per day for each allowable exemption in 1996.

## Residents of Canada or Mexico Engaged in Transportation-Related Employment

Certain residents of Canada or Mexico who enter or leave the United States at frequent intervals are not subject to withholding on their wages. These persons either:

- 1) Perform duties in transportation service between the United States and Canada or Mexico, or
- 2) Perform duties connected to the construction, maintenance, or operation of a waterway, viaduct, dam, or bridge crossed by, or crossing, the boundary between the United States and Canada or the boundary between the United States and Mexico.

**Note:** This employment is subject to withholding of social security and Medicare taxes unless the services are performed for a railroad.

To qualify for the exemption from withholding during a tax year, a Canadian or Mexican resident must give the employer a statement in duplicate with name, address, and identification number, and certifying that the resident:

- 1) Is not a U.S. citizen or resident,
- 2) Is a resident of Canada or Mexico, whichever applies, and
- 3) Expects to perform duties previously described during the tax year in question.

The statement can be in any form, but it must be dated and signed by the employee, and must include a written declaration that it is made under the penalties of perjury.

## Certain Residents of Puerto Rico

If you are a nonresident alien employee who is a resident of Puerto Rico, wages for services performed in Puerto Rico are generally not subject to withholding unless you are an employee of the United States or any of its agencies in Puerto Rico.

## Residents of the Virgin Islands

Nonresident aliens who are bona fide residents of the Virgin Islands are not subject to withholding of U.S. tax on income earned while temporarily employed in the United States. This is because those persons pay their income tax to the Virgin Islands. To avoid having tax withheld on income earned in the United States, bona fide residents of the Virgin Islands should write a letter, in duplicate, to their employers, stating that they are bona fide residents of the Virgin Islands and expect to pay tax on all income to the Virgin Islands.

## Withholding from Other Income

Other income subject to 30% withholding generally includes fixed or determinable income such as interest (other than portfolio interest), dividends, pensions and annuities, and gains from certain sales and exchanges, discussed in Chapter 4. It also includes 85% of social security benefits paid to nonresident aliens.

Income (other than compensation) that is effectively connected with your U.S. trade or business is not subject to withholding at the 30% (or lower treaty) rate. You must file Form 4224, *Exemption From Withholding of Tax on Income Effectively Connected With the Conduct of a Trade or Business in the United States*, with the payer of the income.

Special rules for withholding on partnership income, scholarships, and fellowships are explained next.

## Tax Withheld on Partnership Income

If you are a foreign partner in a U.S. or foreign partnership, the partnership will withhold tax on your share of effectively connected taxable income from the partnership. The partnership will give you a statement on Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*, showing the tax withheld. A partnership that is publicly traded may withhold on your actual distributions of effectively connected income. In this case the partnership will give you a statement on Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*. In either case, the withholding rate is 39.6%. Claim the tax withheld as a credit on line 59b of Form 1040NR.

If you are a foreign partner responsible for withholding, see *Partnership Withholding on Effectively Connected Income* in Publication 515.

## Reduced Withholding on Scholarships and Fellowship Grants

There is no withholding on a *qualified scholarship* as described in Chapter 3.

If you are a nonresident alien student or grantee with an "F," "J," "M," or "Q" visa, and you receive a U.S. source grant or scholarship that is not fully exempt, the withholding agent (usually the payer of the scholarship) can reduce the withholding tax to 14% of the taxable part of the grant or scholarship.

To reduce the withholding tax on your scholarship or grant, you must complete a Form W-4, *Employee's Withholding Allowance Certificate*, every year and give it to the withholding agent.

You are allowed a prorated part of allowable personal exemptions when you complete Form W-4. Figure the prorated part by multiplying the number of days you expect to be in the United States in 1996, times the daily exemption amount (\$6.97) for each allowable exemption. The prorated exemption amount should be shown on the line specified for entering an allowance for yourself on the *Personal Allowances Worksheet* that comes with Form W-4.

If you are a student who qualifies under Article 21(2) of the United States–India Income Tax Treaty, and you are not claiming deductions for away-from-home expenses or other itemized deductions (discussed next), enter the standard deduction on the line specified for entering an allowance based on your marital status and/or job situation on the worksheet. The standard deduction amount for 1996 is \$4,000 if you are single or \$3,350 if you are married. All other nonresident aliens must enter "0". Enter a zero (-0-) on the lines specified for entering allowances for your spouse and dependents on the worksheet unless you are a resident of Canada, Mexico, Japan, the Republic of Korea, a U.S. national, or an Indian student. If you are a resident of Canada, Mexico, Japan, the Republic of Korea, or a U.S. national, an additional daily exemption amount may be allowed for your spouse and each of

your dependents. If you are a student who is eligible for the benefits of Article 21(2) of the United States–India Income Tax Treaty, you can claim an additional daily exemption amount for your spouse. You can also claim an additional amount for each of your dependents **not** admitted to the United States on F-2, J-2, or M-2 visas.

You also can claim other expenses that will be deductible on your Form 1040NR. These include away-from-home expenses (meals, lodging, and transportation), certain state and local income taxes, charitable contributions, and casualty losses, discussed earlier under *Itemized Deductions* in Chapter 5. They also include business expenses, moving expenses, and the IRA deduction discussed under *Deductions* in Chapter 5.

You can also enter the part of your grant or scholarship that is not taxable under U.S. tax law or under a tax treaty. Use the *Deductions and Adjustments Worksheet* in Form W-4 to claim these other expenses.

If you file a Form W-4 to reduce or eliminate the withholding on your scholarship or grant, you must file an annual U.S. income tax return to be allowed the exemptions and deductions you claimed on that form. If you are in the United States during more than one tax year, you must attach a statement to your yearly Form W-4 indicating that you have filed a U.S. income tax return for the previous year. If you have not been in the United States long enough to be required to file a return, you must attach a statement to your Form W-4 saying you will file a U.S. income tax return when required.

After the withholding agent has accepted your Form W-4, tax will be withheld on your scholarship or grant as if it were wages. The gross amount of the income is reduced by the exemptions and deductions allowed from Form W-4 and the withholding tax is figured on the remainder.

You will receive a Form 1042-S from the withholding agent (usually the payer of your grant) showing the gross amount of your scholarship or fellowship grant less the withholding allowance amount, the tax rate, and the amount of tax withheld. Use this form to file your annual U.S. income tax return.

## Income Entitled to Tax Treaty Benefits

If a tax treaty between the United States and your country provides an exemption from, or a reduced rate of, withholding for certain items of income, you should notify the payer of the income (the withholding agent) of your foreign status to claim the benefits of the treaty. Generally, you do this by filing Form 1001, *Ownership, Exemption, or Reduced Rate Certificate*, with the withholding agent. However, do not use Form 1001 for dividends or compensation for personal services. For dividends, the payor can rely on your address of record as the basis for allowing you the benefit of the treaty. The rules that apply to compensation for personal services are discussed next.

**Independent contractors.** If you perform personal services as an independent contractor (rather than an employee) and you can claim an exemption from withholding on that personal service income because of a tax treaty, submit Form 8233, *Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual*, to each withholding agent from whom amounts will be received.

**Students, teachers, and researchers.** Alien students, teachers, and researchers who perform dependent personal services (as employees) can also use Form 8233 to claim exemption from withholding of tax on compensation for services that is exempt from U.S. tax under a U.S. tax treaty.

You must complete the form and attach the statements in Appendix A (for students) or Appendix B (for teachers and researchers), and must then submit it to the withholding agent for processing.

**Employees.** If you are not a student, teacher, or researcher, but you perform services as an employee and your pay is exempt from U.S. income tax under a tax treaty, you can avoid having tax withheld from your wages. Give a statement to your employer, in duplicate, for the tax year giving your name, address, taxpayer identification number, and country of which you are a resident, and certifying that:

- 1) You are not a citizen or resident of the United States, and
- 2) Your compensation is exempt from U.S. income tax and why it is exempt.

The statement should indicate the tax treaty and provision under which you claim the exemption and should show the facts you rely on to prove you meet the requirements of a treaty provision. These can be found in the applicable tax treaty article.

Date and sign the statement. Identify the tax year to which it applies and the compensation to which it relates. Include a declaration that you make the statement under the penalties of perjury. If there is a question about qualifying for exemption from tax, write to the Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024, for advice before asking your employer not to withhold.

**Special events and promotions.** Withholding at the full 30% rate is required for payments made to a nonresident alien or foreign corporation for gate receipts (or television or other receipts) from rock music festivals, boxing promotions, and other entertainment or sporting events, unless the withholding agent has been specifically advised otherwise by letter from the IRS. One reason for this is that the partial or complete exemption provided by certain tax treaties is based on factors that usually cannot be determined until after the close of the tax year. The required letter is issued by the Internal Revenue Service, Assistant Commissioner (International), Attn:

CP:IN:D:C:C:SPS, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

Entertainers and athletes can also apply for reduced withholding on the basis of their net income after expenses. See *Central withholding agreements* earlier under *Withholding from Compensation*.

**Note:** You will be required to pay U.S. tax, at the time of your departure from the United States, on any income for which you incorrectly claimed a treaty exemption. For more details on treaty provisions that apply to compensation, see Publication 901, *U.S. Tax Treaties*.

## Tax Withheld on Real Property Sales

If you are a nonresident alien and you dispose of a U.S. real property interest, the transferee (buyer) of the property generally must withhold a tax equal to 10% of the amount realized on the disposition. If a U.S. real property interest is disposed of by a U.S. trust or estate, generally tax must be withheld equal to 35% of the **gain** on the disposition that can be allocated to foreign beneficiaries.

If you are a partner in a domestic partnership, and the partnership disposes of a U.S. real property interest at a gain, tax will be withheld by the partnership on the amount of gain allocable to its foreign partners. Your share of the income and tax withheld will be reported to you on Form 8805, *Foreign Partner's Information Statement of Section 1446 Withholding Tax*, or Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, (in the case of a publicly traded partnership).

Withholding is **not** required in the following situations:

- 1) The property is acquired by the buyer for use as a residence and the amount realized (purchase price) is not more than \$300,000.
- 2) The property disposed of is an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market.
- 3) The property disposed of is an interest in a corporation that is not regularly traded on an established market, if you give the buyer a copy of a statement issued by the corporation certifying that the interest is not a U.S. real property interest.
- 4) You (the seller) give the buyer a certification stating, under penalties of perjury, that you are not a foreign person, and containing your name, U.S. taxpayer identification number, and home address (or office address, in the case of an entity).
- 5) The buyer receives a withholding certificate from the Internal Revenue Service.
- 6) You give the buyer written notice that you are not required to recognize any gain or loss on the transfer because of a nonrecognition provision in the Internal Revenue

Code or a provision in a U.S. tax treaty. The buyer must file a copy of the notice with the Assistant Commissioner (International), Director, Office of Compliance, CP:IN:D:C:E, 950 L'Enfant Plaza South, S.W., Washington, DC 20024.

- 7) The amount you realize on the transfer of a U.S. real property interest is zero.
- 8) The property is acquired by the United States, a U.S. state or possession, a political subdivision, or the District of Columbia.

The certifications in (3) and (4) must be disregarded by the buyer if the buyer has actual knowledge, or receives notice from a seller's or buyer's agent, that they are false.

The tax required to be withheld on a disposition can be reduced or eliminated under a withholding certificate issued by the IRS. Either you or the buyer can request a withholding certificate.

A withholding certificate can be issued due to:

- 1) A determination by the IRS that reduced withholding is appropriate because either:
  - a) The amount required to be withheld would be more than the transferor's maximum tax liability, or
  - b) Withholding of the reduced amount would not jeopardize collection of the tax,
- 2) The exemption from U.S. tax of all gain realized by the transferor, or
- 3) An agreement for the payment of tax providing security for the tax liability, entered into by the transferee or transferor.

Get Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Corporations*, and Form 8288-B, *Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests*, for information on procedures to request a withholding certificate.

**Credit for tax withheld.** The buyer must report and pay over the withheld tax within 20 days after the transfer using Form 8288, *U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests*. This form is filed with the IRS with two copies of Form 8288-A, *Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests*. Copy B of this statement will be stamped received by the IRS and returned to you (the seller). You must file Copy B with your tax return to take credit for the tax withheld.

## Social Security and Medicare Taxes

If you work as an employee in the United States, you must pay social security and Medicare taxes in most cases. Your payments of these taxes contribute to your coverage under the U.S. social security system. Social security

coverage provides retirement benefits and medical insurance (Medicare) benefits to individuals who meet certain eligibility requirements.

In most cases, the first \$61,200 of taxable wages received in 1995 for services performed in the United States is subject to social security tax. All taxable wages are subject to Medicare tax. Your employer deducts these taxes from each wage payment. Your employer must deduct these taxes even if you do not expect to qualify for social security or Medicare benefits. You can claim a credit for excess social security tax on your income tax return if you have more than one employer and the amount deducted from your combined wages for 1995 is more than \$3,794.40. Use the *Excess Social Security Tax Withheld Worksheet* in the Form 1040NR instructions to figure your credit.

If any one employer deducted more than \$3,794.40, you cannot claim a credit for that amount. Ask your employer to refund the excess.

In general, U.S. social security and Medicare taxes apply to payments of wages for services performed as an employee in the United States, regardless of the citizenship or residence of either the employee or the employer. In limited situations, these taxes apply to wages for services performed outside the United States. Your employer should be able to tell you if social security and Medicare taxes apply to your wages. You cannot make voluntary payments if no taxes are due.

## Students and Exchange Visitors

Services performed by you as a nonresident alien temporarily in the United States as a nonimmigrant under subparagraph "F," "J," "M," or "Q" of section 101(a)(15) of the Immigration and Nationality Act are not covered under the social security program if the services are performed to carry out the purpose for which you were admitted to the United States. This means that there will be no withholding of social security or Medicare taxes from the pay you receive for these services. However, these types of services are very limited, and generally include only on-campus work, practical training, and economic hardship employment.

### Nonresident Alien Students

If you are a nonresident alien admitted to the United States as a student, you generally are not permitted to work for a wage or salary or to engage in business while you are in the United States. In some cases, a student is granted permission to work and it is so noted on the student's copy of Immigration Form I-20, *Certificate of Eligibility for Nonimmigrant Student Status*, or Form I-688B, *Employment Authorization Document*. Social security and Medicare taxes are not withheld from pay for the work.

The Immigration and Naturalization Service (INS) permits on-campus work for students in "F-1" status if it does not displace a U.S. resident. On-campus work means work

performed on the school's premises. On-campus employment includes work performed at an off-campus location that is educationally-affiliated with the school. On-campus work under the terms of a scholarship, fellowship, or assistantship is considered part of the academic program of a student taking a full course of study and is permitted by the INS. In this case, there will be no notation on Form I-20 concerning the work, no Form I-688B will be issued, and social security and Medicare taxes are not withheld from pay received for it.

Employment due to severe economic necessity is sometimes permitted for students in "F-1" status. This requires approval by a Designated School Official. Students granted permission to work due to severe economic necessity will be issued Form I-688B by INS. Social security and Medicare taxes are not withheld from pay for this work.

Students who have been in "F-1" status (except students in English language programs) for at least one academic year (or nine consecutive months) can accept employment for practical training related to the course of study upon approval of the designated school official and after authorization by the INS. If the training is required or for credit or is part of a work-study or cooperative education program, it can be authorized by the school with a notation on Form I-20. Otherwise, such training is considered optional and requires approval by the school and the issuance of Form I-688B by INS and is limited to 12 months. Students in "M-1" status who have completed a course of study can accept employment or practical training for up to six months and must have a Form I-688B issued by INS. Social security and Medicare taxes are not withheld from "F-1" or "M-1" students' pay for these services.

In all other cases, any services performed by a nonresident alien student are not considered as performed to carry out the purpose for which the student was admitted to the United States. Social security and Medicare taxes will be withheld from pay for the services unless the pay is exempt under the Internal Revenue Code.

### Exchange Visitors

Nonresident aliens are admitted to the United States as nonimmigrant exchange visitors under section 101(a)(15)(J) of the Immigration and Nationality Act through the sponsorship of approved organizations and institutions that are responsible for establishing a program for the exchange visitor and for any later modification of that program. Generally, an exchange visitor who has the permission of the sponsor can work for the same reasons as the students discussed above. In these cases, permission is granted by a letter from the exchange visitor's sponsor or by endorsement from the program sponsor on Form IAP-66, *Certificate of Eligibility*.

Social security and Medicare taxes are not withheld on pay for services of an exchange visitor who has been given permission to work and who possesses or obtains a letter of authorization from the sponsor. In all other cases, services performed by an exchange

visitor are not considered as performed to carry out the purpose for which the visitor was admitted to the United States. Social security and Medicare taxes are withheld from pay for the services unless the pay is exempt under the Internal Revenue Code.

Your spouse or child may be permitted to work in the United States with the prior approval of the INS and issuance of Form I-688B.

Nonresident aliens admitted to the United States as participants in cultural exchange programs under section 101(a)(15)(Q) of the Immigration and Nationality Act may be exempt from social security and Medicare taxes. Aliens with "Q" visas are aliens whose employment or training affords the opportunity for culture-sharing with the American public. They are allowed to work in the United States for a specific employer in an approved cultural exchange program. The employer must be the petitioner through whom the alien obtained the "Q" visa. Social security and Medicare taxes are not withheld from pay for this work. Aliens with "Q" visas are not permitted to engage in employment outside of the exchange program activities.

## Refunds of Taxes Withheld in Error

If social security or Medicare taxes were withheld in error from pay you receive that is not subject to these taxes, contact the employer who withheld the taxes for reimbursement. If you are unable to get a full refund of the amount from your employer, file a claim for refund with the Internal Revenue Service on Form 843, *Claim for Refund and Request for Abatement*, and attach a copy of your Form W-2, *Wage and Tax Statement*, to prove the amount of social security and Medicare taxes withheld. Also attach a copy of your visa (if not stamped on Form I-94), INS Form I-94, *Arrival/Departure Record*, and INS Form I-538, *Application by Nonimmigrant Student (FI) for Extension to Stay, School Transfer or Permission to Accept or Continue Employment*. You must also attach a statement from your employer indicating the amount of the reimbursement your employer provided and the amount of the credit or refund your employer claimed or you authorized your employer to claim. If you cannot obtain this statement from your employer, you must provide this information on your **own** statement and explain why you are not attaching a statement from your employer.

File the claim for refund (with attachments) with the IRS office where your employer's returns were filed. If you do not know where your employer's returns were filed, file your claim with the Internal Revenue Service Center, Philadelphia, PA 19255.

## Binational Social Security Agreements

The United States has entered into bilateral social security agreements with foreign countries to coordinate social security coverage and taxation of workers employed for part or

all of their working careers in one of the countries. These agreements are commonly referred to as totalization agreements. Agreements with Austria, Belgium, Canada, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom are in effect. Other agreements are also expected to enter into force in the future. Under these agreements dual coverage and dual contributions (taxes) for the same work are eliminated. The agreements will generally make sure that social security taxes are paid only to one country.

Generally, under these agreements, you will be subject to social security taxes only in the country where you are working. However, if you are temporarily sent to work in another country and your pay would normally be subject to social security taxes in both countries, the agreement may provide that you can remain covered only by the social security system of the country from which you were sent. More information on any specific agreement can be obtained by contacting the U.S. Social Security Administration.

To establish that your pay is subject only to foreign social security taxes and is exempt from U.S. social security taxes (including the Medicare tax) as a result of an agreement, you or your employer should request a statement from the appropriate agency of the foreign country. This will usually be the same agency to which you or your employer pay your foreign social security taxes. The foreign agency will be able to tell you what information is needed for them to issue the statement. Your employer should keep a copy of the statement because it may be needed to show why you are exempt from U.S. social security taxes.

You or your employer will need to request a statement from the foreign agency if you are working in a foreign country and would normally be subject to U.S. social security taxes, but are exempt as a result of an agreement. However, some of the countries with which the United States has agreements will not issue statements in these cases. If the foreign agency refuses to issue the necessary statement, either you or your employer should request a statement from the U.S. Social Security Administration, Office of International Policy, P.O. Box 17741, Baltimore, MD 21235, that your wages are not covered by the U.S. social security system.

Only wages paid on or after the effective date of the agreement can be exempt from U.S. social security taxes.

## Self-Employment Tax

Nonresident aliens are not subject to self-employment tax. Self-employment tax is the social security and Medicare taxes for individuals who are self-employed. Residents of the Virgin Islands, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa are considered U.S. residents for this purpose and are subject to the self-employment tax.

Resident aliens must pay self-employment tax under the same rules that apply to U.S. citizens. However, although a U.S. citizen employed by an international organization, a foreign government, or a wholly-owned instrumentality of a foreign government is subject to the self-employment tax on income earned in the United States, a resident alien employed by such an organization or government does not have to pay self-employment tax.

If you are self-employed in both the United States and in a country with which the United States has a social security agreement (as discussed above), or you temporarily transfer your business activity to or from one of these countries, you may be exempt from self-employment tax as a result of the agreement. To establish your exemption, you should write to the foreign agency to which you pay your foreign social security tax if you are in the foreign country. If you are in the United States, write to the Social Security Administration at the address given above for a determination of your social security tax liability under the agreement.

Self-employment income you receive while you are a resident alien is subject to self-employment tax even if it was paid for services you performed as a nonresident alien.

**Example.** Bill Jones is an author engaged in the business of writing books. Bill had several books published in a foreign country while he was a citizen and resident of that country. During 1995, Bill entered the United States as a resident alien. After becoming a U.S. resident, he continued to receive royalties from his foreign publisher. Bill reports his income and expenses on the cash basis (he reports income on his tax return when received and deducts expenses when paid). Bill's 1995 net earnings from self-employment include the royalties received in 1995, even though he wrote the books before he became a U.S. resident and the books were published while he was a nonresident alien.

**Deduction for one-half of self-employment tax.** If you must pay self-employment tax, you can deduct 7.65% of your net earnings from self-employment in figuring your self-employment tax. You can also deduct one-half of the self-employment tax paid in figuring your adjusted gross income. Get Publication 533, *Self-Employment Tax*, for more information.

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## Estimated Tax Form 1040-ES(NR)

You may have income from which no U.S. income tax is withheld. Or the amount of tax withheld may not equal the income tax you estimate you will owe at the end of the year. If so, you may have to pay estimated tax.

If you are a nonresident alien, you should make estimated tax payments for 1996 if you estimate that the total amount of income tax that will be withheld from your 1996 income will be less than the smaller of:



- 1) 90% of the tax to be shown on your 1996 income tax return, or
- 2) 100% of the tax shown on your 1995 income tax return (if your 1995 return covered all 12 months of the year).

If you have not paid one of these amounts by the required time, you may be subject to an addition to tax.

There will be no addition to tax for underpaying estimated tax if the tax due (income tax liability minus the total withheld tax and certain credits) for 1996 is less than \$500.

**Exception for higher income taxpayers.** If your adjusted gross income for 1995 was more than \$150,000 (\$75,000 if you are married filing separately for 1996), substitute 110% for 100% in (2) above.

For 1995, your adjusted gross income is the amount shown on line 9 of Form 1040NR-EZ or line 31 of Form 1040NR.

For more details, see the Form 1040nd;ES(NR) instructions.

**How to estimate your tax for 1996.** If you filed a 1995 return on Form 1040NR or Form 1040NR-EZ and expect your income, number of exemptions, and total deductions for 1996 to be nearly the same, you should use your 1995 return as a guide to complete the *Estimated Tax Worksheet* in the Form 1040-ES(NR) instructions. If you did not file a return for 1995, or if your income, exemptions, deductions, or credits will be different for 1996 you must estimate these amounts. Figure your tax liability using the Tax Rate Schedule in the 1996Form 1040-ES(NR) instructions that describes your filing status.

**Note:** If you expect to be a resident of Puerto Rico during the entire year, use Form 1040-ES.

**When to pay estimated tax.** Make your first estimated tax payment by the due date for filing the previous year's Form 1040NR or Form 1040NR-EZ. If you have wages subject to the same withholding rules that apply to U.S. citizens, you must file Form 1040NR or Form 1040NR-EZ and make your first estimated tax payment by April 15, 1996. If you do not have wages subject to withholding, file your income tax return and make your first estimated tax payment on Form 1040-ES(NR) by June 17, 1996 or any later date specified in the next paragraph.

If your first estimated tax payment is due April 15, 1996, you can pay your estimated tax in full at that time, or in equal installments by April 15, 1996, June 17, 1996, September 16, 1996, and January 15, 1997. If your first payment is not due until June 17, 1996, you can pay your estimated tax in full at that time, or  $\frac{1}{2}$  of your estimated tax by June 17, 1996, and  $\frac{1}{4}$  of the tax by September 16, 1996, and  $\frac{1}{4}$  by January 15, 1997.

**Fiscal year.** If your return is not on a calendar year basis, your due dates are the 15th

day of the 4th, 6th, and 9th months of your fiscal year, and the 1st month of the following fiscal year. If any date falls on a Saturday, Sunday, or legal holiday, use the next day that is not a Saturday, Sunday, or legal holiday.

**Changes in income, deductions, or exemptions.** Even if you are not required to make an estimated tax payment on April 15 or June 17, your circumstances may change so that you will have to make estimated tax payments later. This may happen if you receive additional income or if any of your deductions are reduced or eliminated. If so, see the instructions for Form 1040-ES(NR) for the payment dates.

**Amended estimated tax.** If, after you have made estimated tax payments, you find your estimated tax is substantially increased or decreased because of a change in your income or exemptions, you should adjust your remaining estimated tax payments. To do this, see the instructions for Form 1040-ES(NR).

**Addition to tax for failure to pay estimated income tax.** You will be subject to an addition to tax for underpayment of installments of estimated tax except in certain situations. These exceptions are explained on Form 2210, *Underpayment of Estimated Tax by Individuals, Estates, and Trusts*.

## 9. Tax Treaty Benefits

### Topics

This chapter discusses:

- Typical tax treaty benefits
- How to obtain copies of tax treaties
- How to claim tax treaty benefits on your tax return

### Useful Items

You may want to see:

#### Publication

- ☐ **901** U.S. Tax Treaties

#### Form (and Instructions)

- ☐ **1040NR** U.S. Nonresident Alien Income Tax Return
- ☐ **1040NR-EZ** U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents
- ☐ **8833** Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)

If you are a nonresident alien from a country with which the United States has an income tax treaty, you may qualify for certain benefits if you meet the treaty requirements. Most treaty provisions require that the alien be a resident of the treaty country to qualify. However, some treaty provisions require that the alien be a national or a citizen of the treaty country.

You can generally arrange to have withholding tax reduced or eliminated on wages and other income that is eligible for tax treaty benefits. See *Income Entitled to Tax Treaty Benefits*, in Chapter 8.

**Treaty income.** A nonresident alien's treaty income is the gross income on which the tax is limited by a tax treaty. Treaty income includes, for example, dividends from sources in the United States that are subject to tax at a tax treaty rate not to exceed 15%. Nontreaty income is the gross income other than treaty income of a nonresident alien.

Figure the tax on treaty income on each separate item of income at the reduced rate that applies to that item under the terms of the treaty.

To determine tax on nontreaty income, figure a partial tax on nontreaty income either at the flat 30% rate or the graduated rate, depending upon whether or not the income is effectively connected with your trade or business in the United States.

Your tax liability is the sum of the tax on treaty income plus the partial tax on nontreaty income, but cannot be more than the tax liability figured as if the tax treaty had not come into effect.

**Example.** Arthur Banks is a nonresident alien who is single and a resident of a foreign country that has a tax treaty with the United States. He received gross income of \$25,450 during the tax year from sources within the United States, consisting of the following items:

Dividends on which the tax is limited to a 15% rate by the tax treaty .....	\$ 1,400
Compensation for personal services on which the tax is not limited by the tax treaty .....	24,050
<b>Total gross income</b> .....	<b>\$25,450</b>

Arthur was engaged in business in the United States during the tax year. His dividends are not effectively connected with that business. He has no deductions other than his own personal exemption.

His tax liability, figured as though the tax treaty had not come into effect, is \$3,656, determined as follows:

Total compensation .....	\$24,050
Less: Personal exemption .....	2,500
<b>Taxable income</b> .....	<b>\$21,550</b>
Tax determined by graduated rate (Tax Table column for single taxpayers) .....	\$ 3,236
Plus: Tax on gross dividends (\$1,400 × 30%) .....	420
<b>Tax determined as though treaty had not come into effect</b> .....	<b>\$ 3,656</b>

Arthur's tax liability, figured by taking into account the reduced rate on dividend income as provided by the tax treaty, is \$3,446, determined as follows:

Tax determined by graduated rate (same as figured above) .....	\$ 3,236
Plus: Tax on gross dividends (\$1,400 × 15%) .....	210
<b>Tax on compensation and dividends ...</b>	<b>\$ 3,446</b>

His tax liability, therefore, is limited to the \$3,446, the tax liability figured using the tax treaty rate on the dividends.

## Some Typical Tax Treaty Benefits

Some general information follows concerning possible tax treaty benefits for income from activities in the United States such as working, training, studying, teaching, or receiving income in the form of capital gains. However, tax treaty benefits also cover such income as dividends, interest, rentals, royalties, pensions, and annuities. If you are a resident of a treaty country and receive this type of income, you should consult the applicable treaty. Get Publication 901, *U.S. Tax Treaties*, for more information on tax treaties.

The following five provisions give a general explanation of some benefits found in many tax treaties.

### Provision A—Personal Services

Nonresident aliens from treaty countries who are in the United States for a short stay and also meet certain other requirements may be exempt from tax on their compensation received for personal services performed in the United States. Many tax treaties require that the nonresident alien claiming this exemption be present in the United States for a total of not more than 183 days during the tax year. Other tax treaties specify different periods of maximum presence in the United States, such as 180 days or 90 days. Spending part of a day in the United States counts as a day of presence.

Tax treaties may also require that:

- 1) The compensation cannot be more than a specific amount (frequently \$3,000), and
- 2) The individual have a foreign employer; that is, an individual, corporation, or entity of a foreign country.

Explanations of the provisions in each treaty are in Publication 901.

### Provision B—For Teachers and Professors

Nonresident alien teachers or professors who are residents of certain treaty countries and who temporarily visit the United States for the primary purpose of teaching at a university or other accredited educational institution are

not subject to U.S. income tax on compensation received for such teaching for the first 2 and sometimes 3 years after their arrival in the United States. Many treaties also provide exemption for engaging in research.

For most treaty exemptions, the arrival date in the United States for purposes of figuring the exemption is the date of the teacher's or researcher's last entry into the United States before beginning the teaching or research services, provided that no treaty benefits have been claimed under the same treaty article prior to that date.

Some treaties also require that the teacher or professor teach as the result of:

- 1) An agreement between the United States and the treaty country,
- 2) An agreement for the exchange of professors and teachers between an educational institution in the United States and an educational institution in the treaty country, or
- 3) An invitation from the U.S. government.

For this type of treaty provision to apply, it must be the primary purpose of the teacher or professor to teach, lecture, instruct, or engage in research. A substantial part of that person's time must be devoted to those duties. The normal duties of a teacher include not only formal classroom work involving regularly scheduled lectures, demonstrations, or other student-participation activities, but also the less formal method of presenting ideas in seminars or other informal groups and in joint efforts in the laboratory.

Further explanations are in Publication 901.

### Provision C—For Employees of Foreign Governments

All treaties have provisions for the exemption of income earned by certain employees of foreign governments. However, a difference exists among treaties as to who qualifies for this benefit. Under many treaties, aliens admitted to the United States for permanent residence do not qualify. Under most treaties, aliens who are not nationals or subjects of the foreign country do not qualify. Employees of foreign governments should read the pertinent treaty carefully to determine whether they qualify for benefits. Chapter 10 of this publication also has advice for employees of foreign governments.

Get Publication 901 for more information.

### Provision D—For Trainees, Students, and Apprentices

Students, apprentices, and trainees generally are exempt from tax on remittances (including scholarship and fellowship grants) received from abroad for study and maintenance. Also, under certain circumstances, a limited amount of compensation received by students, trainees, and apprentices may be exempt from tax.

Each treaty's provisions are discussed in Publication 901.

## Provision E—Capital Gains

The treaties with Barbados, Belgium, Canada, Commonwealth of Independent States, Cyprus, the Czech Republic, Egypt, Finland, France, Germany, Hungary, Iceland, Indonesia, Israel, Italy, Jamaica, Japan, Korea, Malta, Mexico, Morocco, the Netherlands, New Zealand, Norway, Philippines, Poland, Romania, Russia, the Slovak Republic, Spain, Sweden, and Tunisia provide for the exemption of gains from the sale or exchange of certain capital assets by a nonresident alien.

The conditions for claiming the exemptions vary under each tax treaty. You should read the treaty for your country of residence to find out what the conditions are.

## Tax Treaty Articles Table

Table 9–1 shows where to find the provision in each treaty. The columns are lettered A to E, representing the five provisions, and the list of tax treaty countries is on the left. The numerals represent the number of the tax treaty article involved.

**Example.** Giovanni Azari, a teacher from Italy, sees that provision B might cover his situation. He finds column B of Table 9–1 and going down to the line for Italy he finds that he should read Article 20 of the United States–Italy income tax treaty, as he may qualify to exempt from U.S. tax the income he receives for teaching in the United States.

## Obtaining Copies of Tax Treaties

Table 9–2 lists the countries that have tax treaties with the United States. The tax treaties are published in the *Internal Revenue Bulletins* (I.R.B.) or *Cumulative Bulletins* (C.B.), which contain official matters of the Internal Revenue Service. The column headed *Citation* shows the number of the I.R.B. or C.B. and the page on which the treaty can be found.

Regulations implementing some treaties were issued as Treasury Decisions (T.D.). Other treaties are explained by Treasury explanation. The last column lists the T.D. numbers and the *Internal Revenue Bulletins* or *Cumulative Bulletin* in which each T.D. or Treasury explanation is printed.

You can subscribe to the I.R.B. and buy volumes of the C.B. from the Government Printing Office. Copies are also available in most IRS offices and you are welcome to read them there. Many public libraries and business organizations subscribe to commercial tax services that publish the treaties and regulations or explanations. You may find it convenient to use those sources.

Table 9–1. Tax Treaty Articles

Country	A	B	C	D	E
Australia	14,15		19	20	
Austria	X	XII	XI	XIII	
Barbados	14,15		19	20	13
Belgium	14,15	20	19	21	13
Canada	XIV,XV		XIX	XX	XIII
China, People's Rep. of	13,14	19	18	20	12
Commonwealth of Independent States <sup>1</sup>	VI	VI	VI	VI	III
Cyprus	17,18		22	21	16
Czech Republic	14,15	21	20	21	13
Denmark	XI	XIV	X	XIII	
Egypt	15,16	22	21	23	14
Finland	14,15		19	20	13
France	14,15	17	16	18	12
Germany	14,15	20	19	20	13
Greece	X	XII	XI	XIII	
Hungary	13,14	17	16	18	12
Iceland	18,19	21	23	22	16
India	15,16	22	19	21	13
Indonesia	15,16	20	18	19	14
Ireland	XI	XVIII	X	XIX	
Israel	16,17	23	22	24	15
Italy	14,15	20	19	21	13
Jamaica	14,15	22	20	21	13
Japan	17,18	19	21	20	16
Korea	18,19	20	22	21	16
Luxembourg	XII	XIII	XI	XIV	
Malta	14,15	21	20	22	13
Mexico	14,15		20	21	13
Morocco	14,15		17	18	13
Netherlands	15,16	21	20	22	14
New Zealand	14,15		19	20	13
Norway	13,14	15	17	16	12
Pakistan	XI	XII	IX	XIII	
Philippines	15,16	21	20	22	14
Poland	15,16	17	19	18	14
Romania	14,15	19	18	20	13
Russia	13,14		16	18	19
Slovak Republic	14,15	21	20	21	13
Spain	15,16		21	22	13
Sweden	XI	XII	X	XII	IX
Switzerland	X	XII	XI	XIII	
Trinidad and Tobago	17	18	20	19	
Tunisia	14,15		19	20	13
United Kingdom	14,15	20	19	21	13

<sup>1</sup>The U.S.—U.S.S.R. income tax treaty applies to the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

**Exceptions.** You do not have to file Form 8833 if any of the following apply:

- 1) You claim a reduced rate of withholding tax under a treaty on interest, dividends, rent, royalties, or other fixed or determinable annual or periodic income ordinarily subject to the 30% rate.
- 2) You determine your country of residence under a treaty and not under the rules for residency discussed earlier in this publication.
- 3) You claim a reduction or modification of the taxation of income from dependent personal services, pensions, annuities, social security and other public pensions, or income of artists, athletes, students, trainees, or teachers.
- 4) You claim a reduction or modification of taxation of income under an International Social Security Agreement or a Diplomatic or Consular Agreement.
- 5) You are a partner in a partnership or a beneficiary of an estate or trust and the partnership, estate, or trust reports the required information on its return.
- 6) The payments or items of income that are otherwise required to be disclosed total no more than \$10,000.

**Penalty for failure to provide required information on Form 8833.** If you are required to, but do not report the treaty benefits, you are subject to a penalty of \$1,000 for each failure.

## 10. Employees of Foreign Governments and International Organizations

### Topics

This chapter discusses:

- Income exempt under tax treaties
- Income exempt under U.S. tax law

Employees of foreign governments (including foreign municipalities) have two ways to get exemption of their governmental wages from U.S. income tax:

- 1) By a provision in a tax treaty or consular convention between the United States and their country, or
- 2) By meeting the requirements of U.S. tax law.

## Reporting Treaty Benefits Claimed

If you claim treaty benefits that override or modify any provision of the Internal Revenue Code, and by claiming these benefits, your tax is, or might be, reduced, you must file an income tax return on Form 1040NR and attach Form 8833. See *Exceptions* below, for the situations where you are not required to file Form 8833.

You must file a U.S. tax return and Form 8833 if you claim the following treaty benefits:

- 1) A reduction or modification in the taxation of gain or loss from the disposition of a

U.S. real property interest based on a treaty.

- 2) A change to the source of an item of income or a deduction based on a treaty.
- 3) A credit for a specific foreign tax for which foreign tax credit would not be allowed by the Internal Revenue Code.

These are the more common situations for which Form 8833 is required. For information on other situations, write to the Internal Revenue Service, Assistant Commissioner (International), Attention: CP:IN:D:CS, 950 L'Enfant Plaza South, S.W., Washington, D.C. 20024.

Table 9–2. Tax Treaties

Country	Official Text Symbol <sup>1</sup>	General Effective Date	Citation	Applicable Treasury Explanations or Treasury Decision (T.D.)
Australia	TIAS 10773	Dec. 1, 1983	1986–2 C.B. 220	1986–2 C.B. 246.
Austria	TIAS 3923	Jan. 1, 1957	1957–2 C.B. 985	T.D. 6322, 1958–2 C.B. 1038.
Barbados	TIAS 11090	Jan. 1, 1984	1991–2 C.B. 436	1991–2 C.B. 466
Protocol	TIAS	Jan. 1, 1994		
Belgium	TIAS 7463	Jan. 1, 1971	1973–1 C.B. 619	
Protocol	TIAS 11254	Jan. 1, 1988		
Canada <sup>2</sup>	TIAS 11087	Jan. 1, 1985	1986–2 C.B. 258	1987–2 C.B. 298.
China, People's Rep. of	TIAS	Jan. 1, 1987	1988–1 C.B. 414	1988–1 C.B. 447.
Commonwealth of Independent States <sup>4</sup>	TIAS 8225	Jan. 1, 1976	1976–2 C.B. 463	1976–2 C.B. 475.
Cyprus	TIAS 10965	Jan. 1, 1986	1989–2 C.B. 280	1989–2 C.B. 314.
Czech Republic	TIAS	Jan. 1, 1993		
Denmark	TIAS 1854	Jan. 1, 1948	1950–1 C.B. 77	T.D. 5692, 1949–1 C.B. 104; T.D. 5777, 1950–1 C.B. 76.
Egypt	TIAS 10149	Jan. 1, 1982	1982–1 C.B. 219	1982–1 C.B. 243.
Finland	TIAS	Jan. 1, 1991		
France	TIAS 6518	Jan. 1, 1967	1968–2 C.B. 691	T.D. 6986, 1969–1 C.B. 365.
Protocol	TIAS 7270	Jan. 1, 1970	1972–1 C.B. 438	
Protocol	TIAS 9500	Jan. 1, 1979	1979–2 C.B. 411	1979–2 C.B. 428.
Protocol	TIAS 11096	Oct. 1, 1985	1987–2 C.B. 326	
Protocol	TIAS	Various		
Germany	TIAS	Jan. 1, 1990 <sup>3</sup>		
Greece	TIAS 2902	Jan. 1, 1953	1958–2 C.B. 1054	T.D. 6109, 1954–2 C.B. 638.
Hungary	TIAS 9560	Jan. 1, 1980	1980–1 C.B. 333	1980–1 C.B. 354.
Iceland	TIAS 8151	Jan. 1, 1976	1976–1 C.B. 442	1976–1 C.B. 456.
India	TIAS	Jan. 1, 1991		
Indonesia	TIAS 11593	Jan. 1, 1990		
Ireland	TIAS 2356	Jan. 1, 1951	1958–2 C.B. 1060	T.D. 5897, 1952–1 C.B. 89.
Israel	TIAS	Jan. 1, 1995		
Italy	TIAS 11064	Jan. 1, 1985	1992–1 C.B. 442	1992–1 C.B. 473
Jamaica	TIAS 10207	Jan. 1, 1982	1982–1 C.B. 257	1982–1 C.B. 291.
Japan	TIAS 7365	Jan. 1, 1973	1973–1 C.B. 630	1973–1 C.B. 653.
Korea, Republic of	TIAS 9506	Jan. 1, 1980	1979–2 C.B. 435	1979–2 C.B. 458.
Luxembourg	TIAS 5726	Jan. 1, 1964	1965–1 C.B. 615	1965–1 C.B. 642.
Malta	TIAS 10567	Jan. 1, 1982	1984–2 C.B. 339	1984–2 C.B. 366.
Mexico	TIAS	Jan. 1, 1994	1994–34 I.R.B. 4	1994–34 I.R.B. 69
Morocco	TIAS 10195	Jan. 1, 1981	1982–2 C.B. 405	1982–2 C.B. 427.
Netherlands	TIAS	Jan. 1, 1994		
New Zealand	TIAS 10772	Jan. 1, 1984	1990–2 C.B. 274	1990–2 C.B. 303.
Norway	TIAS 7474	Jan. 1, 1971	1973–1 C.B. 669	1973–1 C.B. 693.
Protocol	TIAS 10205	Jan. 1, 1982	1982–2 C.B. 440	1982–2 C.B. 454.
Pakistan	TIAS 4232	Jan. 1, 1959	1960–2 C.B. 646	T.D. 6431, 1960–1 C.B. 755.
Philippines	TIAS 10417	Jan. 1, 1983	1984–2 C.B. 384	1984–2 C.B. 412.
Poland	TIAS 8486	Jan. 1, 1974	1977–1 C.B. 416	1977–1 C.B. 427.
Romania	TIAS 8228	Jan. 1, 1974	1976–2 C.B. 492	1976–2 C.B. 504.
Russia	TIAS	Jan. 1, 1994		
Slovak Republic	TIAS	Jan. 1, 1993		
Spain	TIAS	Jan. 1, 1991		
Sweden	TS 958	Jan. 1, 1940	1940–2 C.B. 43	T.D. 4975, 1940–2 C.B. 43.
Supplemental	TIAS 5656	Various	1965–1 C.B. 626	1965–1 C.B. 674.
Switzerland	TIAS 2316	Jan. 1, 1951	1955–2 C.B. 815	T.D. 5867, 1951–2 C.B. 75; T.D. 6149, 1955–2 C.B. 814.
Trinidad and Tobago	TIAS 7047	Jan. 1, 1970	1971–2 C.B. 479	
Tunisia	TIAS	Jan. 1, 1990		
United Kingdom	TIAS 9682	Jan. 1, 1975	1980–1 C.B. 394	1980–1 C.B. 455.

<sup>1</sup>(TIAS)—Treaties and Other International Act Series; (TS)—Treaty Series.

<sup>2</sup>The Canadian Treaty also may be found in Publication 597, *Information on the United States—Canada Income Tax Treaty*.

<sup>3</sup>The general effective date for the area that was the German Democratic Republic is January 1, 1991.

<sup>4</sup>The U.S.—U.S.S.R. income tax treaty applies to the following countries: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

Employees of international organizations can only exempt their wages by meeting the requirements of U.S. tax law.

The exemption discussed in this chapter applies only to pay received for services performed for a foreign government or international organization. Other U.S. income received by persons who qualify for this exemption may be fully taxable or given favorable treatment under an applicable tax treaty provision. The proper treatment of this kind of income (interest, dividends, etc.) is discussed earlier in this publication.

## Exemption Under Tax Treaty

If you are from a country that has a tax treaty with the United States, you should first look at the treaty to see if there is a provision that exempts your income. To locate the specific provisions, see column C of Table 9–1, which lists

tax treaty articles for employees of foreign governments. The income of U.S. citizens and resident aliens working for foreign governments usually is not exempt. However, in a few instances, the income of a U.S. citizen with dual citizenship may qualify. Often the exemption is limited to the income of persons who also are nationals of the foreign country involved.

## Exemption Under U.S. Tax Law

Employees of foreign countries who do not qualify under a tax treaty provision and employees of international organizations should see if they can qualify for exemption by meeting the following requirements of U.S. tax law.

If you are not a citizen of the United States, or if you are a citizen of the United States but also a citizen of the Philippines, and you work for a foreign government in the United States, your foreign government salary is exempt from U.S. tax if you perform services similar to those performed by U.S. Government employees in that foreign country and that foreign government grants an equivalent exemption. If you work for an international organization in the United States, your salary from that source is exempt from U.S. tax.

**Certification.** To qualify for the exemption under U.S. tax law, the foreign government for which you work must certify to the Department of State that you are their employee and that you perform services similar to those performed by employees of the United States in your country. However, see the following discussion that may affect your qualifying for this exemption.

**Aliens who file the waiver** provided by section 247(b) of the Immigration and Nationality Act to keep their immigrant status no longer qualify for the exemption from U.S. tax under U.S. tax law from the date of filing the waiver with the Attorney General.

Generally, citizens of a tax treaty country who are employees of their government and who are exempt from U.S. tax by an income tax treaty between the United States and their country do not lose the exemption if they sign the waiver.

If the international agreement creating the international organization for which you provides that alien employees are exempt from U.S. income tax, your exemption is **not** affected by the filing of a section 247(b) waiver. Two international organizations that have such a provision are the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank).

**Note:** Only employees of international organizations and foreign governments who are **not** U.S. citizens qualify for the exemption of wages under U.S. tax law. The one exception to this rule is a U.S. citizen who is also a citizen of the Philippines. In addition, the statutory exception applies only to current employees and not to former employees. Pensions received by former employees living in this country do not qualify for exemption.

**An international organization** is an organization designated by the President of the United States through Executive Order to

qualify for the privileges, exemptions, and immunities provided in the International Organizations Immunities Act.

Aliens should find out if they have been made known to, and have been accepted by, the Secretary of State as officers or employees of that organization, or if they have been designated by the Secretary of State, before formal notification and acceptance, as prospective officers or employees.

Employees of an international organization claiming exemption should know the number of the Executive Order covering their organization and should have some written evidence of their acceptance or designation by the Secretary of State.

The exemption is denied when, because the Secretary of State determines the alien's presence in the United States is no longer desirable, an employee leaves the United States (or after a reasonable time allowed for leaving the United States). The exemption is also denied when a foreign country does not allow similar exemptions to U.S. citizens. Then the Secretary of State can withdraw the privileges, exemptions, and immunities from the nationals of that foreign country.

## Diplomatic Representatives, Consular Officers, and Employees of Consulates

All diplomatic representatives are exempt from tax by a tax treaty or by the statutory U.S. tax law described in this chapter. Consular officers and employees of consulates who are **not** citizens or residents of the United States are exempt from tax by a tax treaty, by U.S. tax law, or by a consular convention.

## 11.

## Departing Aliens and the Sailing or Departure Permit

### Topics

This chapter discusses:

- Who needs a sailing permit
- How to get a sailing permit
- Forms you file to get a sailing permit

### Useful Items

You may want to see:

#### Form (and Instructions)

- ☐ **1040-C** U.S. Departing Alien Income Tax Return

- ☐ **2063** U.S. Departing Alien Income Tax Statement

Before leaving the United States, **all** aliens (except those listed next under *Aliens Not Required To Obtain Sailing or Departure Permits*) must obtain a certificate of compliance. This document, also popularly known as the **sailing permit** or **departure permit**, is part of the income tax form you must file before leaving. You will receive a sailing or departure permit after filing a Form 1040-C or Form 2063. These forms are discussed in this chapter.

You generally must pay all U.S. income tax due on your income subject to U.S. tax during the tax year up to the date you leave when you file for your sailing or departure permit. Any taxes due for past years will also have to be paid. However, in some situations, if you can demonstrate to the Internal Revenue Service that your departure does not endanger the collection of tax, you can receive a sailing or departure permit without paying tax at that time.

If you try to leave the United States without a sailing or departure permit, and cannot show that you qualify to leave without it, you may be subject to an income tax examination by an IRS employee at the point of departure. You must then complete the necessary income tax returns and statements and, ordinarily, pay any taxes due.

## Aliens Not Required To Obtain Sailing or Departure Permits

If you are included in one of the following categories, you do not have to get a sailing or departure permit before leaving the United States.

**[1]**Representatives of foreign governments with diplomatic passports, whether accredited to the United States or other countries, members of their households, and servants accompanying them.

Servants who are leaving, but not with a person with a diplomatic passport, must get a sailing or departure permit. However, they can get a sailing or departure permit on Form 2063 without examination of their income tax liability by presenting a letter from the chief of their diplomatic mission certifying that:

- 1) Their name appears on the "White List" (a list of employees of diplomatic missions), and
- 2) They do not owe to the United States any income tax, and will not owe any tax up to and including the intended date of departure.

The statement must be presented to an IRS office.

**[2]**Employees of international organizations and foreign governments (other than diplomatic representatives exempt under category [1]) and members of their households:

- 1) Whose compensation for official services is exempt from U.S. tax under U.S. tax laws (described in Chapter 10), and
- 2) Who receive no other income from U.S. sources.

**[3]**Alien students, industrial trainees, and exchange visitors, including their spouses and children, who enter on F, H-3, H-4, or J visas only and who receive no income from U.S. sources while in the United States under those visas other than:

- 1) Allowances to cover expenses incident to study or training in the United States, such as expenses for travel, maintenance, and tuition,
- 2) The value of any services or food and lodging connected with this study or training,
- 3) Income from employment authorized by the Immigration and Naturalization Service (INS), or
- 4) Certain interest income that is not effectively connected with a U.S. trade or business. (See *Portfolio Interest* in Chapter 4.)

**[4]**Alien students, including their spouses and children, who enter on M visas only and who receive no income from U.S. sources while in the United States on those visas, other than—

- 1) Income from employment authorized by the Immigration and Naturalization Service (INS), or
- 2) Certain interest income that is not effectively connected with a U.S. trade or business. (See *Portfolio Interest* in Chapter 4.)

**[5]**Certain other aliens temporarily in the United States who have received no taxable income during the tax year up to and including the date of departure or during the preceding tax year. If the IRS has reason to believe that an alien has received income subject to tax and that the collection of income tax is jeopardized by departure, it may then require the alien to obtain a sailing or departure permit. Aliens covered by this paragraph are:

- 1) Alien military trainees who enter the United States for training under the sponsorship of the Department of Defense and who leave the United States on official military travel orders,
- 2) Alien visitors for business on a B-1 visa, or both a B-1 visa and a B-2 visa, who do not remain in the United States or a U.S. possession for more than 90 days during the tax year,
- 3) Alien visitors for pleasure on a B-2 visa,
- 4) Aliens in transit through the United States or any of its possessions on a C-1 visa, or under a contract, such as a bond agreement, between a transportation line and the Attorney General under section 238(c) of the Immigration and Nationality Act, and
- 5) Aliens who enter the United States on a border-crossing identification card; or for

whom passports, visas, and border-crossing identification cards are not required, if they are visitors for pleasure, or visitors for business who do not remain in the United States or a U.S. possession for more than 90 days during the tax year; or if they are in transit through the United States or any of its possessions.

**[6]**Alien residents of Canada or Mexico who frequently commute between that country and the United States for employment, and whose wages are subject to the withholding of U.S. tax.

If you are in one of these categories and do not have to get a sailing or departure permit, you must be able to support your claim for exemption with proper identification or give the authority for the exemption.

**Exceptions.** If you are an alien in category [1] or [2] above, who filed the waiver under section 247(b) of the Immigration and Nationality Act, you must get a sailing or departure permit.

If you are an alien in category [1] or [2], whose income is exempt from U.S. tax because of an income tax treaty or international agreement, you do not lose this tax exemption by signing the section 247(b) waiver. But you must get a sailing or departure permit even though your income is exempt.

## Getting a Sailing or Departure Permit

The following discussion covers when and where to get your sailing permit.

### Where to get a sailing or departure permit.

It is advisable for aliens who have been working in the United States to get the permit from an IRS office in the area of their employment, but it also can be obtained from an IRS office in the area of their departure.

### When to get a sailing or departure permit.

You should get your sailing or departure permit at least 2 weeks before you plan to leave. You cannot apply earlier than 30 days before your planned departure date. Do not wait until the last minute in case there are unexpected problems.

**Papers to submit.** Getting your sailing or departure permit will go faster if you bring to the IRS office papers and documents related to your income and your stay in the United States. Please bring the following records with you if they apply:

- 1) Your passport and alien registration card or visa.
- 2) Copies of your U.S. income tax returns filed for the past 2 years. If you were in the United States for less than 2 years, bring the income tax returns you filed in that period.
- 3) Receipts for income taxes paid on these returns.

- 4) Receipts, bank records, canceled checks, and other documents that prove your deductions, business expenses, and dependents claimed on your returns.
- 5) A statement from each employer showing wages paid and tax withheld from January 1 of the current year to the date of departure if you were an employee.
- 6) A profit-and-loss statement from January 1 of the current year to the date of departure if you were self-employed.
- 7) Proof of estimated tax payments for the past year and this year.
- 8) Documents showing any gain or loss from the sale of personal property, including capital assets and merchandise.
- 9) Documents relating to scholarship or fellowship grants including verification of the grantor, source, and purpose of the grant.
- 10) Documents indicating you qualify for any special tax treaty benefits claimed.

## Forms To File

If you must get a sailing or departure permit, you must file Form 2063 or Form 1040-C. Employees in the IRS office can assist in filing these forms. Both forms have a “certificate of compliance” section. When the certificate of compliance is signed by an agent of the District Director, it certifies that your U.S. tax obligations have been satisfied according to available information. Your Form 1040-C copy of the signed certificate, or the one detached from Form 2063, is your sailing or departure permit.

**Form 2063.** This is a short form that asks for certain information but does not include a tax computation. The following departing aliens can get their sailing or departure permits by filing Form 2063, *U.S. Departing Alien Income Tax Statement*:

- 1) Aliens, whether resident or nonresident, who have had no taxable income for the tax year up to and including the date of departure and for the preceding year, if the period for filing the income tax return for that year has not expired, or
- 2) Resident aliens who have received taxable income during the tax year or preceding year and whose departure will not hinder the collection of any tax. However, if the IRS has information indicating that the aliens are leaving to avoid paying their income tax, they must file a Form 1040-C.

Aliens in either of these categories who have not filed an income tax return or paid income tax for any tax year must file the return and pay the income tax before they can be issued a sailing or departure permit on Form 2063.

The sailing or departure permit detached from Form 2063 can be used for all departures during the current year. However, the IRS may cancel the sailing or departure permit for any

later departure if they believe the collection of income tax is jeopardized by any later departure.

**Form 1040-C.** If you must get a sailing or departure permit and you do not qualify to file Form 2063, you must file Form 1040-C, *U.S. Departing Alien Income Tax Return*.

Ordinarily, all income received or reasonably expected to be received during the tax year up to and including the date of departure must be reported on Form 1040-C and the tax on it must be paid. When you pay any tax shown as due on the Form 1040-C, and you file all returns and pay all tax due for previous years, you will receive a sailing or departure permit. However, the IRS may permit you to furnish a bond or an employer letter guaranteeing payment instead of paying the taxes for certain years. See *Bond or Employer Letter To Ensure Payment*, discussed later. The sailing or departure permit issued under the conditions in this paragraph is only for the specific departure for which it is issued.

If you submit an employer letter guaranteeing payment of tax with your Form 1040-C, you do not need to fill out the form in detail. Just fill out the identifying information on the form, sign it, and attach the letter. The IRS office where you submit the form will then issue your sailing or departure permit.

**Returning to the United States.** If you furnish the IRS with information showing, to the satisfaction of the Service, that you intend to return to the United States and that your departure does not jeopardize the collection of income tax, you can get a sailing or departure permit by filing Form 1040-C without having to pay the tax shown on it. You must, however, file all income tax returns that have not yet been filed as required, and pay all income tax that is due on these returns.

You must pay these taxes when you file your annual income tax return. Your Form 1040-C must include all income received and reasonably expected to be received during the entire year of departure. The sailing or departure permit issued with this Form 1040-C can be used for all departures during the current year. However, the Service may cancel the sailing or departure permit for any later departure if the payment of income tax appears to be in jeopardy.

**Joint return on Form 1040-C.** Departing husbands and wives who are nonresident aliens cannot file joint returns. However, if both spouses are resident aliens, they can file a joint return on Form 1040-C if:

- 1) Both spouses can reasonably be expected to qualify to file a joint return at the normal close of their tax year, and
- 2) If the tax years of the spouses are ended, they are ended so as to end at the same time.

If you are a resident alien and wish to file a joint return, contact the IRS office where you file the form.

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## Bond or Employer Letter To Ensure Payment

Usually, you must pay the tax shown as due on Form 1040-C when you file it. However, if you pay all taxes due that you owe for prior years, you can furnish a bond or an employer letter guaranteeing payment instead of paying the income taxes shown as due on the Form

1040-C or the tax return for the preceding year if the period for filing that return has not expired.

The bond must equal the tax due plus interest to the date of payment as figured by the IRS. Information about the form of bond and security on it can be obtained from your IRS office.

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## Paying Taxes and Obtaining Refunds

Except when a bond or an employer letter is furnished, or the IRS is satisfied that the departure of a nonresident alien does not jeopardize the collection of income tax, you must pay all tax shown as due on the Form 1040-C at the time of filing it. If the tax computation on Form 1040-C results in overpayment, there is no tax to pay at the time you file that return. However, the IRS cannot provide a refund at the time of departure. If you are due a refund, you must file either Form 1040NR or Form 1040NR-EZ at the end of the tax year.

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## Filing Annual U.S. Income Tax Returns

Form 1040-C is not an annual U.S. income tax return. If an income tax return is required by law, that return must be filed even though a Form 1040-C has already been filed. Chapters 5 and 7 discuss filing an annual U.S. income tax return. The tax paid with Form 1040-C should be taken as a credit against the tax liability for the entire tax year as shown on your annual U.S. income tax return.

## Appendix A

This appendix contains the statements nonresident alien students must file with Form 8233, *Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual*, to claim a tax treaty exemption from withholding of tax on compensation for dependent personal services. See Chapter 8 for more information on withholding.

### Belgium, Iceland, Japan, Korea, Norway, Poland, and Romania

I was a resident of \_\_\_\_\_ *[insert the name of the country under whose treaty you claim exemption]* on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States for the primary purpose of studying at \_\_\_\_\_ *[insert the name of the university or other recognized educational institution at which you study]*.

I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and \_\_\_\_\_ *[insert the name of the country under whose treaty you claim exemption]* in an amount not in excess of \$2,000 for any tax year. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

I will be present in the United States only for such period of time as may be reasonably or customarily required to effectuate the purpose of this visit.

I arrived in the United States on \_\_\_\_\_ *[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date.

### France, and Trinidad and Tobago

I was a resident of \_\_\_\_\_ *[insert the name of the country under*

*whose treaty you claim exemption]* on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States for the primary purpose of studying at \_\_\_\_\_ *[insert the name of the university or other accredited educational institution at which you study]*.

I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and \_\_\_\_\_ *[insert the name of the country under whose treaty you claim exemption]* in an amount not in excess of \$2,000 for any tax year. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

I will be present in the United States only for such period of time as may be reasonably or customarily required to effectuate the purpose of this visit.

I arrived in the United States on \_\_\_\_\_ *[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years.

### People's Republic of China

I was a resident of the People's Republic of China on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am present in the United States solely for the purpose of my education or training.

I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and the People's Republic of China in an amount not in excess of \$5,000 for any tax year.

I arrived in the United States on \_\_\_\_\_ *[insert the date of your last arrival in the United States*

*before beginning study or training]*. I am claiming this exemption only for such period of time as is reasonably necessary to complete the education or training.

### Cyprus

I was a resident of Cyprus on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States for the primary purpose of studying at \_\_\_\_\_ *[insert the name of the university or other recognized educational institution at which you study]*.

I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Cyprus in an amount not in excess of \$2,000 for any tax year. I have not previously claimed an income tax exemption under that treaty for income received as a student before the date of my arrival in the United States.

I arrived in the United States on \_\_\_\_\_ *[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date, and for such additional period of time as is necessary to complete, as a full-time student, educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution.

### Egypt

I was a resident of Egypt on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States for the primary purpose of studying at \_\_\_\_\_ *[insert the name of the university or other recognized educational institution at which you study]*.

I will receive compensation for personal services performed in the United States. This compensation

qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Egypt in an amount not in excess of \$3,000 for any tax year. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

I will be present in the United States only for such period of time as may be reasonably or customarily required to effectuate the purpose of this visit.

I arrived in the United States on \_\_\_\_\_ *[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date, and for such period of time as is necessary to complete, as a full-time student, educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution.

### Germany

I was a resident of the Federal Republic of Germany on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States as a student or business apprentice for the purpose of full-time study or training at \_\_\_\_\_ *[insert the name of the accredited university, college, school or other educational institution]*; or, I am temporarily present in the United States as a recipient of a grant, allowance, or award from \_\_\_\_\_ *[insert the name of the nonprofit organization or government institution providing the grant, allowance, or award]*.

I will receive compensation for dependent personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and the Federal Republic of Germany in an amount not in excess of \$5,000 for any tax year, provided that such services are performed for the purpose of supplementing funds otherwise available for my maintenance, education, or training.



I arrived in the United States on \_\_\_\_\_ *[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of four tax years beginning with the tax year that includes my arrival date.

## Indonesia

I was a resident of Indonesia on the date of my arrival in the United States. I am not a United States citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States solely for the purpose of study at \_\_\_\_\_ *[insert the name of the university or other accredited educational institution at which you study]*; or, I am temporarily present in the United States as a recipient of a grant, allowance or award from \_\_\_\_\_ *[insert the name of the nonprofit organization or government institution providing the grant, allowance, or award]* for the primary purpose of study, research, or training.

I will receive compensation for services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Indonesia in an amount not in excess of \$2,000 for my tax year, provided such services are performed in connection with my studies or are necessary for my maintenance.

I arrived in the United States on \_\_\_\_\_ *[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date.

## Morocco

I was a resident of Morocco on the date of my arrival in the United States. I am not a U.S. citizen. I

have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States for the primary purpose of studying at \_\_\_\_\_ *[insert the name of the university or other recognized educational institution at which you study]*.

I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Morocco in an amount not in excess of \$2,000 for any tax year. I have not previously claimed an income tax exemption under that treaty for income received as a student before the date of my arrival in the United States.

I arrived in the United States on \_\_\_\_\_ *[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years, beginning with the tax year that includes my arrival date.

## Pakistan

I am a resident of Pakistan. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States solely as a student at \_\_\_\_\_ *[insert the name of the recognized university, college or school in the United States at which you study]*.

I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Pakistan in an amount not in excess of \$5,000 for any tax year.

## Philippines

I was a resident of the Philippines on the date of my arrival in the

United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States for the primary purpose of studying at \_\_\_\_\_ *[insert the name of the university or other recognized educational institution at which you study]*.

I will receive compensation for personal services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Philippines in an amount not in excess of \$3,000 for any tax year. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

I will be present in the United States only for such period of time as may be reasonably or customarily required to effectuate the purpose of this visit.

I arrived in the United States on \_\_\_\_\_ *[insert the date of your last arrival in the United States before beginning study at the U.S. educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date.

## Spain

I was a resident of Spain on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States for the primary purpose of studying or training at \_\_\_\_\_ *[insert the name of the university or other accredited educational institution at which you study or train]*; or, I am temporarily present in the United States as a recipient of a grant, allowance, or award from \_\_\_\_\_ *[insert the*

*name of the nonprofit organization or government institution providing the grant, allowance or award]*.

I will receive compensation for services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Spain in an amount not in excess of \$5,000 for any tax year.

I arrived in the United States on \_\_\_\_\_ *[insert the date of your last arrival in the United States before beginning study at the United States educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date.

## Tunisia

I was a resident of Tunisia on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am temporarily present in the United States for the purpose of full-time study, training, or research at \_\_\_\_\_ *[insert the name of the university or other accredited educational institution at which you study, train, or perform research]*.

I will receive compensation for services performed in the United States. This compensation qualifies for exemption from withholding of federal income tax under the tax treaty between the United States and Tunisia in an amount not in excess of \$4,000 for any tax year.

I arrived in the United States on \_\_\_\_\_ *[insert the date of your last arrival in the United States before beginning study at the United States educational institution]*. The treaty exemption is available only for compensation paid during a period of five tax years beginning with the tax year that includes my arrival date.

## Appendix B

This appendix contains the statements nonresident alien teachers and researchers must file with Form 8233, *Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual*, to claim a tax treaty exemption from withholding of tax on compensation for dependent personal services. See Chapter 8 for more information on withholding.

### Austria, Denmark, Ireland, Pakistan, and Switzerland

I am a resident of \_\_\_\_\_ [insert the name of the country under whose treaty you claim exemption]. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am a professor or teacher visiting the United States for the purpose of teaching at \_\_\_\_\_ [insert the name of the educational institution at which you teach], which is a recognized educational institution. I will receive compensation for my teaching activities.

The teaching compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and \_\_\_\_\_ [insert the name of the country under whose treaty you claim exemption]. I have not previously claimed an income tax exemption under this treaty for income received as a teacher or student before the date of my arrival in the United States.

I arrived in the United States on \_\_\_\_\_ [insert the date of your last arrival into the United States before beginning the teaching services for which exemption is claimed]. The treaty exemption is available only for compensation paid during a period of two years beginning on that date.

### Commonwealth of Independent States

I am a resident of \_\_\_\_\_ [insert name of C.I.S. member]. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by a governmental agency or institution in the United States, or by an educational or scientific research institution in the United States, to

come to the United States for the purpose of teaching, engaging in research, or participating in scientific, technical, or professional conferences at \_\_\_\_\_ [insert the name of the governmental agency or institution, educational or scientific institution, or organization sponsoring a professional conference], which is a governmental agency or institution, an educational or scientific institution, or an organization sponsoring a professional conference. I will receive compensation for my teaching, research, or conference activities.

The teaching, research, or conference compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and the former Union of Soviet Socialist Republics. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, conference participant, or student before the date of my arrival in the United States.

Any research I perform will not be undertaken primarily for the benefit of a private person or commercial enterprise of the United States or a foreign trade organization of \_\_\_\_\_ [insert name of C.I.S. member], unless the research is conducted on the basis of intergovernmental agreements on cooperation.

I arrived in the United States on \_\_\_\_\_ [insert the date of your last arrival in the United States before beginning the teaching, research, or conference services for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

### Egypt, Hungary, Korea, Philippines, Poland, and Romania

I was a resident of \_\_\_\_\_ [insert the name of the country under whose treaty you claim exemption] on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government (or by a political subdivision or local authority thereof), or by a university

or other recognized educational institution in the United States for a period not expected to exceed two years for the purpose of teaching or engaging in research at \_\_\_\_\_ [insert the name of the educational institution], which is a recognized educational institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation received during the entire tax year (or for the portion of the year from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and \_\_\_\_\_ [insert the name of the country under whose treaty you claim exemption]. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States on \_\_\_\_\_ [insert the date of your last arrival in the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

### Belgium and Japan

I was a resident of \_\_\_\_\_ [insert the name of the country under whose treaty you claim the exemption] on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States, to come to the United States for the purpose of teaching or engaging in research at \_\_\_\_\_ [insert the name of the educational institution], which is a recognized educational institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation received during the entire tax year (or during the portion of the year from \_\_\_\_\_ to \_\_\_\_\_)

qualifies for exemption from withholding of federal tax under the tax treaty between the United States and \_\_\_\_\_ [insert the name of the country under whose treaty you claim exemption]. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States on \_\_\_\_\_ [insert the date of your last arrival in the United States before beginning the teaching or research services for which the exemption is claimed]. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

### Germany

I am a resident of the Federal Republic of Germany. I am not a United States citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am a professor or teacher visiting the United States for the purpose of advanced study, teaching, or research at \_\_\_\_\_ [insert the name of the accredited university, college, school, or other educational institution, or a public research institution or other institution engaged in research for the public benefit]. I will receive compensation for my teaching, research, or study activities.

The compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) for these activities qualifies for exemption from withholding of federal tax under the tax treaty between the United States and the Federal Republic of Germany. I have not previously claimed an income tax exemption under that treaty for income received as a student, apprentice, or trainee during the immediately preceding period. (If, however, following the period in which the alien claimed benefits as a student, apprentice, or trainee, that person returned to the Federal Republic of Germany and resumed residence and physical presence before returning to the United States as a teacher or researcher, that person

may claim the benefits of this treaty.)

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States on \_\_\_\_\_[insert the date of your last arrival into the United States before beginning the services for which the exemption is claimed]. The treaty exemption is available only for compensation paid during a period of two years beginning on that date.

### **Iceland and Norway**

I was a resident of \_\_\_\_\_[insert the name of the country under whose treaty you claim exemption] on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other recognized educational institution in the United States for a period not expected to exceed two years for the purpose of teaching or engaging in research at \_\_\_\_\_[insert the name of the educational institution], which is a recognized educational institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation qualifies for exemption from withholding of federal tax under the tax treaty between the United States and \_\_\_\_\_[insert the name of the country under whose treaty you claim exemption]. I have not previously claimed an income tax exemption under this treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Any research I perform will not be undertaken primarily for the private benefit of a specific person or persons.

I arrived in the United States on \_\_\_\_\_[insert the date of your last arrival in the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

### **India**

I was a resident of India on the date of my arrival in the United States. I am not a United States

citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am visiting the United States for the purpose of teaching or conducting research at \_\_\_\_\_[insert the name of the university, college, or other recognized educational institution]. I will receive compensation for my teaching or study activities.

The teaching or research compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) for these activities qualifies for exemption from withholding of federal tax under the tax treaty between the United States and India.

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States on \_\_\_\_\_[insert the date of your last arrival into the United States before beginning the services for which the exemption is claimed]. The treaty exemption is available only for compensation paid during a period of two years beginning on that date.

### **Indonesia**

I was a resident of Indonesia on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by \_\_\_\_\_[insert the name of the university, college, school, or other similar educational institution] to come to the United States solely for the purpose of teaching or engaging in research at that educational institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Indonesia. I have not previously claimed an income tax exemption under that treaty for income received as a teacher or researcher before the date specified in the next paragraph.

I arrived in the United States on \_\_\_\_\_[insert the date of your arrival into the United States before beginning the teaching or research services for which the exemption is claimed]. The treaty exemption

is available only for compensation paid during a period of two years beginning on that date.

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

### **Jamaica**

I was a resident of Jamaica on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am visiting the United States for the purpose of teaching or conducting research for a period not expected to exceed two years at \_\_\_\_\_[insert the name of the educational institution at which you teach or conduct research], which is a recognized educational institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Jamaica. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

I arrived in the United States on \_\_\_\_\_[insert the date of your last arrival in the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemption is available only for compensation paid during a period of two years beginning on that date.

### **People's Republic of China**

I was a resident of the People's Republic of China on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am visiting the United States for the purpose of teaching, giving lectures, or conducting research at \_\_\_\_\_[insert the name of the educational institution or scientific research institution at which you teach, lecture, or conduct research], which is an accredited educational institution or scientific research institution. I will receive

compensation for my teaching, lecturing, or research activities.

The teaching, lecturing, or research compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and the People's Republic of China. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, lecturer, researcher, or student before the date of my arrival in the United States.

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States \_\_\_\_\_[insert the date of your last arrival in the United States before beginning your teaching, lecturing, or research activities]. The treaty exemption is available only for compensation received during a maximum aggregate period of three years.

### **France**

I was a resident of France on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government or by a university or other accredited educational or research institution in the United States to come to the United States for the purpose of teaching or engaging in research at \_\_\_\_\_[insert the name of the educational or research institution], which is an accredited educational or research institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and France. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Any research I perform will be undertaken in the public interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States on \_\_\_\_\_[insert the date of your last arrival in the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

## Greece

I am a resident of Greece. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I am a professor or teacher visiting the United States for the purpose of teaching at \_\_\_\_\_[insert the name of the other educational institution at which you teach], which is an educational institution. I will receive compensation for my teaching activities.

The teaching compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Greece. I have not previously claimed an income tax exemption under that treaty for income received as a teacher or student before the date of my arrival in the United States.

I arrived in the United States on \_\_\_\_\_[insert the date of your last arrival in the United States before beginning the teaching services for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of three years beginning on that date.

## Italy

I was a resident of Italy on the date of my arrival in the United States. I am not a U.S. citizen. I have not been accorded the privilege of residing permanently in the United States as an immigrant.

I am a professor or teacher visiting the United States for the purpose of teaching or performing research at \_\_\_\_\_[insert the name of the educational institution or medical facility at which you teach or perform research], which is an educational institution or a medical facility primarily funded

from governmental sources. I will receive compensation for my teaching or research activities.

The compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Italy. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Any research I perform will be undertaken in the general interest and not primarily for the private benefit of a specific person or persons.

I arrived in the United States on \_\_\_\_\_[insert the date of your last arrival in the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

## Luxembourg and Sweden

I am a resident of \_\_\_\_\_[insert the name of the country under whose treaty you claim exemption]. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by \_\_\_\_\_[insert the name of the educational institution where you teach or engage in research], which is a recognized educational institution, to come to the United States for the purpose of teaching or engaging in research at that institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and \_\_\_\_\_[insert the name of the country under whose treaty you claim exemption]. I have not previously claimed an income tax exemption under that treaty for income received as a teacher,

researcher, or student before the date of my arrival in the United States.

Any research I perform will not be carried on for the benefit of any person using or disseminating the results for purposes of profit.

I arrived in the United States on \_\_\_\_\_[insert the date of your last arrival in the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

## Trinidad and Tobago

I was a resident of Trinidad and Tobago on the date of my arrival in the United States. I am not a U.S. citizen. I have not been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

I have accepted an invitation by the U.S. government, or by a university or other educational institution in the United States, to come to the United States for the purpose of teaching or engaging in research at \_\_\_\_\_[insert the name of the educational institution], which is an educational institution approved by an appropriate governmental education authority. No agreement exists between the government of the United States and the government of Trinidad and Tobago for the provision of my services. I will receive compensation for my teaching or research services.

The teaching or research compensation received during the entire tax year (or for the period from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and Trinidad and Tobago. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Any research I perform will be undertaken in the public interest and not primarily for the private

benefit of a specific person or persons.

I arrived in the United States on \_\_\_\_\_[insert the date of your last arrival in the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of two years beginning on that date.

## United Kingdom

I was a resident of the United Kingdom on the date of my arrival in the United States. I am not a U.S. citizen. I have not been accorded the privilege of residing permanently in the United States as an immigrant.

I am a professor or teacher visiting the United States for a period of not more than two years for the purpose of teaching or engaging in research at \_\_\_\_\_[insert the name of the educational institution], which is a recognized educational institution. I will receive compensation for my teaching or research activities.

The teaching or research compensation received during the entire tax year (or during the period from \_\_\_\_\_ to \_\_\_\_\_) qualifies for exemption from withholding of federal tax under the tax treaty between the United States and the United Kingdom. I have not previously claimed an income tax exemption under that treaty for income received as a teacher, researcher, or student before the date of my arrival in the United States.

Any research I perform will be undertaken in the public interest and not primarily for the benefit of any private person or persons.

I arrived in the United States on \_\_\_\_\_[insert the date of your last arrival in the United States before beginning the teaching or research services for which exemption is claimed]. The treaty exemption is available only for compensation received during a period of two years beginning on that date. The entire treaty exemption is lost retroactively if my stay in the United States exceeds two years.



